No. _____

IN THE

Supreme Court of the United States

VAUGHN S. ARCHER,

Petitioner,

v.

DANIEL PARAMO,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether Archer knowingly and voluntarily entered into a guilty plea where the trial court failed to advise him as to the potential application of a statutory reduction to his sentence that was available if he exercised his right to trial?

(2) Whether trial counsel was ineffective in failing to advise Archer that, by entering a guilty plea, he was waiving a statutory reduction to his sentence that could have been applied had he exercised his right to trial?

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TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Vaughn Archer ("Archer" or "Petitioner") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in *Archer v. Paramo*, No. 16-56464.

I. OPINIONS BELOW

The memorandum opinion of the Ninth Circuit Court of Appeals in *Archer v. Paramo*, No. 16-56464 (Jan. 24, 2019), was not published. Petitioner's Appendix ("Pet. App.") A. The order of the United States District Court denying relief is also unreported. Pet. App. B. The California Supreme Court's order denying the petition for review in *People v. Archer*, No. S221503 (Jan. 14, 2015) was unpublished. Pet. App. E. The California Court of Appeal's reasoned decision on direct appeal, No. B250502 (Sep. 15, 2014) is published. *People v. Archer*, 230 Cal. App. 4th 693 (2014); Pet. App. F.

II. JURISDICTION

The Ninth Circuit affirmed the district court's dismissal of Archer's habeas corpus petition filed pursuant to 28 U.S.C. § 2254 challenging his judgment of sentence by the California state court on January 24, 2019. Pet. App. A. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to the U.S. Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Section 1 of the Fourteenth Amendment to the U.S. Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 2254(d)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

IV. STATEMENT OF THE CASE

A. Basis for Federal Jurisdiction

Petitioner is in state custody at California State Prison in San Diego, California. He filed a habeas corpus petition under 28 U.S.C. § 2254 challenging the constitutionality of his convictions and sentence. The district court dismissed the petition on the merits with prejudice. Pet. App. B. The Ninth Circuit reviewed pursuant to 28 U.S.C. § 2253 and affirmed. Pet. App. A.

B. Facts Material to the Consideration of the Question Presented

1. The Plea

Archer pled no contest to 2 counts of second degree robbery, 2 counts of carjacking, and 3 counts of felonious assault. Pet. App. F.5 n.2. He was sentenced to 27 years 4 months pursuant to a plea agreement. Pet. App. F.8; Pet. App. H.

Discussion of a possible plea first appears on the record on October 3, 2012. During that appearance, the prosecutor represented that the only offer he could make would be a life sentence, but that he would be open to counter-offers from the defense. 2 Reporter's Transcript ("RT") D-10. Archer at that time refused to negotiate, declaring he wanted to go to trial. *Id.*

On October 30, 2012, the parties announced they were ready to proceed to trial. An amended information had been filed that morning, which defense counsel had not yet seen. 2 RT E-1; 2 Clerk's Transcript ("CT") 101-09. The prosecutor once again represented that the only possible deal he could offer would include a life

sentence. 2 RT E-3. The case was transferred to a master calendar judge to assign a courtroom for trial. *Id.*; 2 CT 110-14. A plea offer with a determinant sentence of 27 years 4 months was made shortly before lunch. Pet. App. I.4. According to defense counsel, he had been seeking 24 years and Archer would accept no more than 16. Pet. App. I.4-5. The trial court weighed in, advising Archer that he was facing 34 years 4 months to life on the charged crimes. Pet. App. I.5. The court further advised that it was unlikely in his opinion that the Board of Prison Terms would grant Archer parole in 34 years 4 months if everything in the probation report was proven. "You have to face the fact that, if you're convicted, you're looking at 34 years 4 months to life. Basically, you're going to die in prison. The People's offer would be to allow you have a life after you do your time." Pet. App. I.5-6. The trial court further represented that it would be unable to procure a better sentence of Archer on an open plea. Pet. App. I.6.

After conferring with counsel in lockup, Archer agreed to accept the plea deal. Pet. App. I.7. At that point, Archer's eligibility for sentencing enhancements was discussed in chambers. Pet. App. I.8. After the chambers conference, "several corrections" were made to the second amended information, the "most significant" being that the prior strike was dismissed. Pet. App. F.5; Pet. App. I.8-12 ; 1 CT 122. In addition, various sentencing enhancements were stricken. Pet. App. I.8-12; 1 CT 116-17. The trial court represented that its prior calculation of the maximum possible sentence was in line with the remaining charges. Pet. App. I.8 ("[N]ow we're going to strike those [allegations] so that he doesn't have all of those pending,

and the calculation I had . . . made as to his maximum time was on -- assuming those are stricken.").

During the advisement in which the prosecutor outlined the consequences of the plea, Archer signaled confusion over which information he was pleading to and whether he had been properly advised as to its content. Pet. App. I.20. When Archer stated, "I just don't feel right with this yet," the trial court responded that the alternative was to go to trial. *Id.* Archer continued to raise a concern that he was "in the dark" and that he felt "pressured" to take the plea deal. Pet. App. I.21. The trial court admonished Archer that "today is the day for trial." *Id.*

The discussion between Archer and the trial court continued:

> THE COURT: ...you apparently don't want to go to trial and don't want to take the deal. You have to do one or the other today.
>
> THE DEFENDANT: Okay. All right. But you asked me do I have any questions or have any concerns --
>
> THE COURT: Okay.
>
> THE DEFENDANT: And I'm just expressing my concerns.
>
> THE COURT: Well, I can't help that. Today's the date for trial.
>
> THE DEFENDANT: I understand that.
>
> THE COURT: Either you go to trial and whatever happens at trial is whatever happens, or you can take an offer where you'll have some certainty as to what your future is. Nobody's pressuring you. If you don't want to take this deal, you don't have to.
>
> THE DEFENDANT: I'm just saying I can't go to trial with my attorney right here. He's been my attorney for two

months. My other attorney was here for ten months. What am I going to do? I'm forced to go take this deal. I don't have nothing else

THE COURT: Are you ready, Mr. Huntley?

MR. HUNTLEY: Yes, Your Honor.

THE DEFENDANT: No.

THE COURT: Okay. He's ready to go to trial,...

THE DEFENDANT: I just had to say what I had to say.

THE COURT: Do you want to take the --

THE DEFENDANT: I have no choice. Yes. I want to take the --

THE COURT: Yes. You have a choice. If you say that once more, you're going to trial. Okay? Don't -I'm not going to let you make a false record.

THE DEFENDANT: I'm not making a false record.

THE COURT: You are making a false record when you say you don't have a --

THE DEFENDANT: No.

THE COURT: Okay. I'm taking a recess. Put him in the lockup.

Pet. App. I.21-23. When the matter was taken up after a recess, defense counsel represented that Archer wanted to continue with the plea. Pet. App. I.23. The plea colloquy continued, with Archer affirming that he was not taking the plea by force or threat and that he understood the rights he was waiving by accepting the plea. Pet. App. I.23-24.

At his next appearance, Archer sought to withdraw the plea. Pet. App. K. After invoking his right to self-representation, Archer argued that he entered into the plea in reliance on misinformation provided by his counsel and that it was involuntary. Pet. App. K.8-10. Archer filed a written motion to withdraw his plea on July 9, 2013. Pet. App. K. Archer also moved to recuse the trial judge under Penal Code section 170.6. The motion was granted and a new judge was assigned to hear all remaining matters. Pet. App. J.16-17. The substitute judge denied Archer's motion to withdraw the plea, concluding that Archer had the benefit of two recesses to consider the plea and its consequences, and that nothing in the record demonstrated that Archer could have prevailed at trial or that he could have obtained a better disposition. The trial court also found that there was no evidence of duress, trickery, or fraud, deficient performance by his counsel, or prejudice. Pet. App. J.24-27.

2. State Post-Conviction Proceedings

Archer appealed his conviction and sentence to the California Court of Appeal. On appeal, Archer argued that he was misadvised by the trial court as to the minimum possible sentence exposure before taking his plea and that his trial counsel was ineffective for failing to correctly advise him as to the applicability of California Penal Code section 654, which could have reduced the minimum sentencing range had he gone to trial. Pet. App. F.2, 15. The court of appeal affirmed Archer's conviction and sentence in a published opinion. *People v. Archer*, 230 Cal. App. 4th 693 (2014); Pet. App. F. The California Supreme Court denied a petition for review on January 14, 2015. Pet. App. E.

3. Federal Court Proceedings

Archer filed a timely petition for habeas corpus in district court on December 31, 2015. Pet. App. D.1-2. In it, he raised both direct appeal claims. Pet. App. D.18. The Magistrate Judge denied the petition in a report and recommendation that was later adopted by the district court. Pet. App. B, C, D. The district court denied Archer's motion for a COA. U.S.D.C. Docket No. 19. Judgment was entered on September 5, 2016. Pet. App. C.

The Ninth Circuit Court of Appeal affirmed. It held that clearly established federal law did not require the trial court to advise Archer of the potential application of section 654 because its application was not sufficiently automatic. Pet. App. A-2-3. It further held that the California Court of Appeal was not unreasonable in concluding that Archer failed to present evidence demonstrating that he would have rejected the plea deal had he known about section 654. Pet. App. A-3-4.

V. REASONS FOR GRANTING THE WRIT

To be valid, a guilty plea must be knowing and intelligent, "with sufficient awareness of the relevant circumstances and likely consequences.'" *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). Here, the California Court of Appeal acknowledged that California Penal Code section 654 "may have applied to some of the charges against Archer," Pet. App. F.12, while also concluding that the trial court had no duty to advise him of the fact, even though the entry of Archer's guilty plea waived application of the statute. The court of appeal then failed to apply the correct harmless error

standard in assessing prejudice. The court of appeal's decision fails to satisfy 28 U.S.C. § 2254(d) in both its application of clearly established federal law and its factfinding.

Even if the trial court was not required to advise Archer regarding section 654, prevailing professional norms required his counsel to do so. Archer entered a guilty plea even though he would have gone to trial if he had understood the possibility of reducing his minimum sentencing exposure and parole eligibility date. He clearly alleged that the plea was entered in reliance on counsel's advice, and that he learned of section 654 only after entering the plea. Counsel was ineffective for failing to advise Archer regarding "the rules and regulations affecting the determination of the maximum and minimum periods of confinement." 5 B.E. Witkin et al, California Criminal Law § 248 (4th ed. 2012). As in the previous claim, the court of appeal's decision on this claim also fails to satisfy § 2254(d) in both its application of clearly established law and its factfinding.

A. Certiorari review is necessary because Archer waived his right to trial without a full understanding of the rights he was waiving and under pressure from the trial court

1. The Trial Court's Duty to Advise Includes the Range of Permissible Sentences Under *Boykin*

"A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, 'with sufficient awareness of the relevant circumstances and likely consequences.'" *Bradshaw*, 545 U.S. at 183 (quoting *Brady*, 397 U.S. at 748). It is clearly established federal law that the trial court has a duty to "produce a record affirmatively showing that the defendant's

guilty plea was knowing and voluntary." *Hanson v. Phillips*, 442 F.3d 789, 797 (2d Cir. 2006) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). "What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence." *Boykin*, 395 U.S. at 243-44.

At the time of Archer's plea, the trial court advised him that if he did not take the plea and was convicted on all counts, he was "looking at 34 years, 4 months to life. Basically, you're going to die in prison. The People's offer would be to allow you to have a life after you do your time." Pet. App. I.5-6. The court added that Archer would have to serve more than 23 years before he would be eligible for parole. Pet. App. I.6. Under the terms of Archer's plea, he would serve 27 years, 4 months in prison. Pet. App. I.5.

However, by waiving his right to trial, Archer was also waiving any potential sentence reduction he might be entitled to under California Penal Code 654, which requires a trial court to "stay execution of sentence on any convictions arising out of the same course of conduct and committed with the same objective." Pet. App. F.10 (citing *People v. McCoy*, 208 Cal. App. 4th 1333, 1338 (2012)); *People v. Jones*, 217 Cal. App. 4th 735, 743 (2013) (holding that California Rule of Court 4.412(b) prevents a defendant who was sentenced in accordance with a plea agreement from later challenging his sentence on section 654 grounds). Although, as the California Court of Appeal acknowledged, Archer could have enjoyed the potential benefit of

section 654 even under his plea by requesting an evidentiary hearing on the matter, Pet. App. F.11, that potential benefit was foreclosed once the plea was concluded without the issue being raised. Cal. R. Ct. 4.412(b) ("By agreeing to a specified prison term personally and by counsel, a defendant who is sentenced to that term or a shorter one abandons any claim that a component of the sentence violates section 654's prohibition of double punishment, unless that claim is asserted at the time the agreement is recited on the record.").

The California Court of Appeal, reviewing the trial court's denial of Archer's motion to withdraw his plea, stated that Archer was required to establish "good cause," a standard that required Archer to "show by clear and convincing evidence that he . . . was operating under mistake, ignorance, or any other factor overcoming the exercise of his . . . free judgment, including inadvertence, fraud, or duress." Pet. App. F.10. It then held that "[f]ailing to explain to Archer the possible effects section 654 might have on his sentence was not a mistake, let alone a mistake that overcame Archer's exercise of free judgment, nor did it cause Archer to operate in ignorance when he entered his plea." *Id.* (quoting *People v. Breslin*, 205 Cal. App. 4th 1409, 1416 (2012)). Noting that trial courts have "broad latitude" in applying section 654 and that the inquiry is "intensely factual" in nature, the Court of Appeal further held that a trial court "has no obligation or even ability to determine how it (or another trial court) will exercise its discretion at a future stage of the proceedings." Pet. App. F.10-11.

The court of appeal concluded that "[s]ection 654 very well may have applied to some of the charges against Archer." Pet. App. F.12. Nevertheless, it viewed Archer's contention that, after application of section 654, his maximum sentence would have been 23 years and 8 months to life—as opposed to the 34 years, 4 months to life the trial court advised him was his maximum possible sentence—as "speculati[ve]." Pet. App. F.12-13. The court of appeal thus held that the application of section 654 was not a direct consequence of his plea on which Archer needed to be advised. Instead, the court of appeal reasoned, "[i]n order to properly advise Archer of the maximum of the statutory range of punishment, the trial court had to disregard factors, like section 654, that might (or might not) reduce Archer's sentence." Pet. App. F.13.

The problem Archer identifies with his plea, however, goes to a more basic issue. Archer was not advised that, even if convicted on all charges, he might have been eligible for parole much earlier than anticipated under section 654. In taking the plea, Archer waived application of section 654. In short, he waived a right he did not even know he had.

"*Boykin* explicitly included 'the permissible range of sentences' as one of the factors that defendants must be aware of before pleading guilty." *Jamison v. Klem*, 544 F.3d 266, 277 (3d Cir. 2008) (quoting *Boykin*, 395 U.S. at 244 n.7). Although the California Court of Appeal acknowledged the trial court's obligation to advise Archer of his "maximum possible sentence," Pet. App. F.9, it failed to acknowledge the requirement to advise as to the permissible range. Its failure to do so was an

unreasonable application of *Boykin*. *Jamison*, 544 F.3d at 275-77 (applying *Boykin* within the confines of a § 2254(d)(1) analysis and concluding that the state court's failure to require an advisement of the minimum permissible sentence was an unreasonable application of clearly established federal law).

Plea bargaining "presents grave risks of prosecutorial overcharging," *Lafler v. Cooper*, 566 U.S. 156, 185 (2012) (Scalia, J., dissenting)—and overcharging in a manner that may compel a criminal defendant to enter into a plea that is not necessarily in his best interest. By limiting its obligation to advise a criminal defendant of his maximum (rather than minimum) possible sentence should he go to trial, a trial court compounds the problem by emphasizing the prosecution's leverage to make the bargain. Section 654 was designed to counteract such potential overcharging by providing a mechanism at sentencing that prevents double punishment for the same act. By pleading guilty, Archer waived this important protection.

Although the Ninth Circuit concluded that the application of section 654 was not sufficiently automatic for its waiver to be considered a direct consequence of a plea, the analysis in *People v. Patterson*, No. B248859, 2014 WL 4631418 (Cal. Ct. App. Sep. 17, 2014), suggests the analysis is relatively straight-forward. There, the court of appeal determined that the trial court had erred in failing to apply section 654 to case like this one involving carjacking and robbery charges. The court of appeal explained

> In imposing consecutive sentences on the robbery and carjacking counts, the trial court found that the two

> offenses did not constitute a single transaction because Patterson formed a separate intent to take Cardona's van after he took Cardona's wallet. However, the mere fact that separate items of property were taken from Cardona does not, in and of itself, support an inference that Patterson acted with a separate intent. Instead, based on the evidence presented at trial, Patterson took Cardona's wallet and vehicle in one indivisible transaction, the objective of which was to deprive Cardona of his property by means of force or fear. That same force and fear was used to commit both crimes, and the robbery was not separated in either time or place from the carjacking.

Id. at *10. It reasoned that because Patterson had not yet reached a place of relative safety at the time of the second taking and thus completed the crime as defined by California law, the takings represented one continuous offense. *Id.* (citing *People v. Anderson*, 51 Cal. 4th 989, 994 (2011), and *People v. Irvin*, 230 Cal. App. 3d 180, 185 (1991)). In addition, the court of appeal relied on *People v. Bauer*, 1 Cal. 3d 368, 377 (1969), for the proposition that "where a defendant robs his victim in one continuous transaction of several items of property, punishment for robbery on the basis of the taking of one of the items and other crimes on the basis of the taking of the other items is not permissible." *Patterson*, 2014 WL 4631418, at *10. Accordingly, the court of appeal concluded that Patterson acted with "the single objective to deprive [the victim] of his property." *Id.*

Because Archer was also charged with carjacking and robbery, a similar analysis could have been applicable had Archer not unknowingly waived application of section 654 through his guilty plea. Like Patterson, Archer had also not reached a place of relative safety or taken possession of victim Ahmad's vehicle at the time he took his watch and cell phone. A court holding an evidentiary hearing on the

matter therefore could have concluded there was not substantial evidence to support multiple punishments. *See People v. Brents*, 53 Cal. 4th 599, 618 (2012) ("A trial court's express or implied determination that two crimes were separate, involving separate objectives, must be upheld on appeal if supported by substantial evidence."). The argument against double punishment is even stronger for victim Murga. The wallet and passport Archer was charged with taking were in Murga's car when Archer drove away with it. 2 CT 20. In sum, Archer could have avoided prison terms for both robbery counts. *People v. Corpening*, 2 Cal. 5th 307, 420 (1995) (holding section 654 applicable to stay the robbery charge when the robbery and carjacking were accomplished in a single act).

Emphasizing only the maximum possible sentence, without acknowledging possible sentencing discounts to which a criminal defendant might be entitled, places undue pressure on that defendant to waive trial to avoid the maximum sentence. When a criminal defendant does so without a reasonable understanding of the permissible sentencing range, his waiver cannot be deemed a knowing one under *Boykin*.

2. The California Court of Appeals' determination that Archer failed to demonstrate prejudice for the misadvisement is contrary to *Chapman*

The court of appeal held that, even if the trial court misadvised him, Archer could not demonstrate prejudice because he did not state in his declaration in support of the motion to withdraw his plea that he "would not have entered the plea of guilty had the trial court given a proper advisement." Pet. App. F.14. However, this analysis placed the burden on Archer to prove prejudice, contrary to the

standard the state court was required to apply, *Chapman v. California*, 386 U.S. 18 (1967). *Dansberry v. Pfister*, 801 F.3d 863, 868-69 (7th Cir. 2015) (holding that state court's failure to apply Chapman to trial court's misadvisement was "contrary" to *Chapman* and not entitled to deference).

Moreover, the court of appeal overlooked evidence in the record in violation of § 2254(d)(2). *Taylor v. Maddox*, 366 F.3d 992, 1001 (9th Cir. 2004), *abrogated on other grounds by Murray v. Schriro*, 745 F.3d 984, 999-1000 (9th Cir. 2014) (citing *Miller-El v. Cockrell*, 537 U.S. 322, 346 (2003)) (holding that § 2254(d)(2) is violated and "the state court fact-finding process is undermined where the state court has before it, yet apparently ignore[s], evidence that supports petitioner's claim").

Arguing the motion to withdraw his plea, Archer stated

> Life is a huge sentence. I understand that. But regardless, I feel that life is life, but 34 to life is more than 17 to life or more than 15 to life.
>
> [¶]
>
> *I still could go to trial facing 15 to life versus 34 to life versus taking a deal of 27 years. . .. If I would have went to trial and beat the life, I couldn't have gotten 27 years.*

Pet. App. J.20.

This statement illustrates that Archer's primary concern was not with the life term—which section 654 would not have affected—but with the term of years. It was, after all, the term of years that would determine the date of Archer's parole eligibility, even if he was also sentenced to the life term. Moreover, Archer could have reasonably concluded that a jury would not convict him of the kidnaping charge—the only charge that subjected him to a potential life term.

As a pro se litigant, Archer was not required to make the allegation any plainer. This is particularly true in the circumstances presented here, where Archer repeatedly made plain his desire to proceed to trial. 2 RT D-10-11. Archer had mere hours to consider his plea and told the trial court he felt "pressured" to take it. Pet. App. I.4-5, 21. As Archer stated in argument, "I gave up resistance" to entering a plea "because I was threatened with dying in prison." Pet. App. J.8.

By filing his motion to withdraw, Archer was demonstrating, as well as any allegation could, that he would not have taken the plea if he had not been misadvised. The state court failed to accord Archer due process when it so strictly construed his pro se pleading. *See Haines v. Kerner*, 404 U.S. 519 (1972) (holding that "inartfully pleaded" pro se allegations sufficient to justify factual development); *Wolf v. McDonnell*, 418 U.S. 539, 556 (1974) (identifying the *Haines* rule as a matter of due process). In doing so, the state court's factual findings cannot be deemed reasonable under § 2254(d)(2). *Taylor*, 366 F.3d at 999 (holding that § 2254(d)(2) is violated when the state court's fact-finding process is defective); *Winston v. Kelly*, 592 F.3d 535, 555 (4th Cir. 2010) ("[I]t would be improper to apply a presumption of correctness to state court factual findings, for example, when the state proceedings violated due process[.]").

The state court's factual finding is also unreasonable because it overlooks Archer's statement that he would have gone to trial if he understood that 34 years was not necessarily his minimum sentencing exposure. *Taylor*, 366 F.3d at 1001; *Milke v. Ryan*, 711 F.3d 998, 1008 (9th Cir. 2013) ("[W]e can't accord AEDPA

deference when the state court has before it, yet apparently ignores, evidence that is highly probative and central to petitioner's claim." (internal quotation marks omitted)); *Ocampo v. Vail*, 649 F.3d 1098, 1112 (9th Cir. 2011) ("To the extent the Court of Appeals ignored that the 'two additional witnesses,' in context, necessarily included Vasquez, or that testimony that Vasquez's statement 'implicated' Ocampo contains critically important substance, its conclusion was based on an unreasonable determination of the facts in light of the evidence presented." (internal quotation marks omitted)).

Accordingly, the state court's decision on prejudice was unreasonable. Archer is entitled to relief, or in the alternative, an evidentiary hearing to demonstrate prejudice. *See, infra,* § B.3.

B. Certiorari Review is Necessary Because Trial Counsel Rendered Ineffective Assistance in Failing to Advise Archer That a Guilty Plea Would Waive Possible Sentence Reductions Under Penal Code Section 654

"Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010); *see also Hill v. Lockhart*, 474 U.S. 52, 57 (1985). An ineffective assistance of counsel claim is analyzed under the two-part standard of *Strickland v. Washington*, 466 U.S. 668 (1984), which asks: (1) whether counsel's representation was within the range of competence demanded of attorneys in criminal cases; and (2) whether there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial." *Iaea v. Sunn*, 800 F.2d 861, 864, 865 (9th Cir. 1986) (citing *Lockhart*, 474 U.S. at 56, 59).

1. Counsel had a duty to advise Archer of his minimum and maximum sentencing exposure, and factors affecting that exposure, under prevailing professional norms

The deficient performance analysis in the guilty plea context, as in other areas of performance, "is necessarily linked to the practice and expectations of the legal community." *Padilla*, 559 U.S. at 366. "[P]revailing norms of practice as reflected in American Bar Association standards and the like ... are guides to determining what is reasonable[.]" *Id.* (quoting *Strickland*, 466 U.S. at 694). Here, such authorities demonstrate the widespread expectation that competent counsel will advise a criminal defendant as to both his minimum and maximum sentencing exposure, whether he proceeded to trial or accepted the plea.

> To meet the required standard of professionalism regarding whether a plea agreement should be accepted, counsel must provide the defendant with competent advice as to all aspects of the case, including a candid evaluation of the case. *This should include an accurate discussion of the rules and regulations affecting the determination of the maximum and minimum periods of confinement, the average length of confinement served by prisoners on like charges, and all relevant circumstances of the case.*

5 B.E. Witkin et al, California Criminal Law § 248 (4th ed. 2012) (emphasis added); *see also* ABA Standards for Criminal Justice, Pleas of Guilty 14-3.2(b) commentary, p. 122 (3d ed. 1999) (outlining defense counsel's duty to assess plea offers "not only based on the maximum possible punishment in the event of a guilty plea, but also by comparison to the probable sentence the judge would impose after trial"); 5 Crim. Proc. § 21.3(b) (4th ed.) ("It is essential that the attorney advise the defendant of the

available options and possible consequences, that is, of the relative merits of the proposed plea bargain versus going to trial." (internal quotations omitted)).

"Because 'an intelligent assessment of the relative advantages of pleading guilty is frequently impossible without the assistance of an attorney,' counsel have a duty to supply criminal defendants with necessary and accurate information." *Iaea*, 800 F.2d at 865 (quoting *Brady*, 397 U.S. at 748 n.6) (internal citation omitted). By entering a guilty plea, Archer was waiving any possible application of section 654. *Jones*, 217 Cal. App. 4th at 743 (holding that California Rule of Court 4.412(b) prevents a defendant who was sentenced in accordance with a plea agreement from later challenging his sentence on section 654 grounds). In light of the court of appeal's acknowledgment that "[s]ection 654 very well may have applied to some of the charges against Archer," Pet. App. F.12, counsel was duty-bound to advise him of that fact. *See Padilla*, 559 U.S. at 369 (explaining that even when "the law is not succinct and straightforward," defense counsel is required to at least advise his client of the risk of adverse consequences related to a plea).

The California Court of Appeal concluded that counsel was not ineffective because "there is no evidence that Archer received incorrect advice that caused him to accept the plea deal" because he "stated only that his trial counsel failed to advise him about section 654 'prior to plea of guilty.'" Pet. App. F.16. That conclusion fails to consider that such advice was required under prevailing professional norms. Accordingly, the state court unreasonably applied *Strickland*, *Padilla*, and *Lockhart*. *Williams v. Taylor*, 529 U.S. 362, 407 (2000) (holding that "a state-court

decision involves an unreasonable application of this Court's precedent if the state court identifies the correct governing legal rule from this Court's cases but unreasonably applies it to the facts of the particular state prisoner's case").

Moreover, Archer stated in his motion to withdraw the plea that he had not been advised of the potential application of section 654 prior to his plea. Pet. App. J.3, 5. The court of appeal made no adverse credibility finding as to that allegation. Nor did the trial court. Indeed, the record is consistent with the allegation, in that Archer had a limited time to consider the plea and consult with counsel and there was no discussion of section 654 on the record prior to the plea. The court of appeal's "no evidence" finding ignores this record evidence and is thus unreasonable. *Taylor*, 366 F.3d at 1001 (citing *Miller-El v. Cockrell*, 537 U.S. 322, 346 (2003)) (holding that § 2254(d)(2) is violated and "the state court fact-finding process is undermined where the state court has before it, yet apparently ignore[s], evidence that supports petitioner's claim").

2. The court of appeal's assessment of prejudice was unreasonable

To the extent the court of appeal's opinion can be read as holding that Archer failed to demonstrate prejudice, it is both an unreasonable application of *Lockhart* and premised on unreasonable findings of fact.

Lockhart holds that the prejudice inquiry can be satisfied by the existence of "special circumstances" supporting the conclusion that the defendant "placed particular emphasis" on counsel's deficient advice. 474 U.S. at 60; *Iaea*, 800 F.2d at 865 (holding that record evidence of the defendant's reluctance to plead might

support the special circumstances analysis). The California Court of Appeal failed to acknowledge or apply *Lockhart*'s special circumstance–analysis, resulting in an unreasonable application of clearly established federal law.

There was ample evidence in the record to support such an analysis. In his handwritten motion to withdraw his plea, which Archer prepared pro se, Archer alleged that "advise from counsel effected outcome of the plea process," when Archer "had to rely on counsel to make informed decisions." Pet. App. K.4. He further alleged that, in light of the fact that he was not advised as to the application of section 654, he "pleaded guilty under duress and ignorance, against my free judgment . . . on threat from counsel that I would never get out unless I took this time." Pet. App. K.5 (concluding that he accepted the plea "under the influence of mistake, ignorance . . . overreaching the exercise of clear and free judgment").

Archer's motion concluded

> Counsel was a substantial inducement causing defendant to plead guilty. Attorneys calculation led defendant to believe he was shortening his potiential (sic) sentence. As a result of counsels acts or omissions it fairly appears defendant entered his plea under the influence of mistake, ignorance, or inadvertence or any other factor overreaching clear and free judgement which would justify the withdrawl (sic) of defendants guilty plea. Defendant was ineffectively represented by counsel. Prejudice can be measured by determining whether counsel's acts or omissions adversely effected defendants ability to knowingly and intelligently and voluntarily decided to enter a plea of guilty. Where a defendant has been denied effective assistance of counsel in entering a plea of guilty, he is entitled to reversal and an opportunity to withdraw his plea if he so desires.

Pet. App. K.19.

The record is replete with evidence that Archer was reluctant to enter a plea. When the subject of plea negotiations were first raised in court, Archer rebuffed the idea of making a counter-offer to the prosecution's tentative offer of life, stating "[L]et's start trial" and later repeating "I just want to go straight to trial. I don't want to come back." 2 RT D-10-11. It was only after the trial court advised him that he was facing a potential 34 plus-years-to-life sentence and that "Basically, you're going to die in prison," that Archer agreed to a plea. Pet. App. I.5-6, 23. As Archer said during argument on the motion to withdraw, it was at that point "I gave up resistance" to entering a plea. Pet. App. J.8.

Moreover, Archer had mere hours to decide whether to take the plea. The plea offer was made "right before lunch" on the same day the plea was entered. Pet. App. I.4. The record suggests Archer was informed immediately prior to the court's afternoon session. When Archer stated "I just don't feel right about this yet," the trial court responded that the alternative was to go to trial that day. Pet. App. I.20-23. After stating that he felt "pressured" to take the plea deal, Archer entered his plea the same afternoon. Pet. App. I.21, 23.

Ultimately, Archer stated that he "still could go to trial facing 15 to life versus 34 to life versus taking a deal of 27 years. . .. If I would have went to trial and beat the life, I couldn't have gotten 27 years." Pet. App. J.19. Given that, under the negotiated term of 27 years and 4 months, Archer would have been approximately 70 years of age upon his release, 1 CT 115 (reflecting Archer's date of

birth as 09/24/1968), Archer could have reasonably concluded there was no material difference between a life sentence and the negotiated term.

Altogether, the record demonstrates special circumstances showing that Archer placed particular emphasis on both his maximum and minimum sentencing exposure when making the decision to plead guilty. His counsel's failure to advise him of the potential applicability of section 654 prevented Archer from making an intelligent decision regarding whether to plead or whether to go to trial. The court of appeal overlooked this record evidence in reaching its decision, which resulted in an unreasonable factual finding within the meaning of § 2254(d)(2). *Taylor*, 366 F.3d at 1001; *Milke*, 711 F.3d at 1008; *Ocampo*, 649 F.3d at 1112. The Ninth Circuit similarly overlooked this record evidence in concluding the state court's decision was reasonable, Pet. App. A.4, and its decision should be reversed.

C. Archer should be given the opportunity to further prove his allegations in an evidentiary hearing

Because Archer has satisfied the prerequisite of § 2254(d) and alleges meritorious claims, he is entitled to an evidentiary hearing to further develop his claims. *Brumfield v. Cain*, 135 S. Ct. 2269, 2275-76 (2015) ("[F]ederal habeas courts may 'take new evidence in an evidentiary hearing' when § 2254(d) does not bar relief"); *Hurles v. Ryan*, 752 F.3d 768, 790-92 (9th Cir. 2014) (holding that the state court's denial of a judicial bias claim was based on an unreasonable determination of the facts and remanding for federal evidentiary hearing on claim); *Earp v. Ornoski*, 431 F.3d 1158, 1166-72 (9th Cir. 2005) (holding that the California Supreme Court's summary denial of a prosecutorial misconduct claim was based on

an unreasonable determination of the facts and remanding for a federal evidentiary hearing on claim); *Williams v. Woodford*, 859 F. Supp. 2d 1154, 1161 (E.D. Cal. 2012) (Kozinski, J. op.) (holding that once § 2254(d) is satisfied, AEDPA "poses no further obstacle" to development of the claim in federal court").

VI. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant his petition for writ of certiorari.

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: April 23, 2019

By: _____
Tracy Casadio*
Deputy Federal Public Defender
Attorneys for Petitioner
VAUGHN ARCHER
**Counsel of Record*

INDEX TO APPENDICES

APPENDIX A

NOT FOR PUBLICATION

FILED

JAN 24 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VAUGHN S ARCHER, Petitioner-Appellant, v. DANIEL PARAMO, Warden, Respondent-Appellee.	No. 16-56464 D.C. No. 2:16-cv-00445-JLS-AS MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Argued and Submitted November 15, 2018
Pasadena, California

Before: GOULD, PARKER,** and MURGUIA, Circuit Judges.

Petitioner-appellant Vaughn Archer pleaded no contest to seven charges in California state court and was sentenced to 27 years and 4 months of imprisonment. In this habeas petition, Archer argues that he entered the plea involuntarily and unintelligently because the state trial court and Archer's counsel

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Barrington D. Parker, United States Circuit Judge for the U.S. Court of Appeals for the Second Circuit, sitting by designation.

failed to advise Archer that he might be eligible for a reduced sentence under § 654 of the California Penal Code if Archer had proceeded to trial.

We review the district court's denial of Archer's petition de novo. *Hurles v. Ryan*, 752 F.3d 768, 777 (9th Cir. 2014). We review the state court's adjudication of Archer's claims under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). 28 U.S.C. § 2254. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm the district court's denial of Archer's petition.

1. In his first claim, Archer argues that his plea was unintelligent and therefore invalid under *Boykin v. Alabama*, 395 U.S. 238 (1969), because the state trial court failed to advise him of the potential applicability of California Penal Code § 654 to his maximum sentence if convicted at trial. But a plea is still valid under *Boykin* even "if the defendant did not correctly assess every relevant factor entering into his decision[,]" and "[a] defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended . . . the likely penalties attached to alternative courses of action." *Brady v. United States*, 397 U.S. 742, 757 (1970). In Archer's case, the possible application of § 654 was not the type of direct consequence that the trial court was required to discuss with Archer. *See Torrey v. Estelle*, 842 F.2d 234, 236 (9th Cir. 1988) ("The distinction between a direct and collateral consequence of a plea turns

on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment.") (internal quotation marks omitted).

Moreover, it would be impracticable to require the state trial court to advise Archer regarding § 654. The applicability of § 654 is highly fact dependent, and the court's determination of whether the section applies is made at sentencing after the benefit of a trial, which usually brings the relevant facts to light. *See People v. Cleveland*, 87 Cal. App. 4th 263, 267 (Ct. App. 2001); *People v. Ross*, 201 Cal. App. 3d 1232, 1240–41 (Ct. App. 1988). Whether and to what extent § 654 would have applied if Archer had been convicted at trial was entirely speculative at the plea phase (and still is now, because there has never been a trial or evidentiary hearing). The state trial court was not required, under any "clearly established Federal law," to engage in this speculative analysis before accepting Archer's plea. *See* 28 U.S.C. § 2254(d)(1). Accordingly, the California Court of Appeal reasonably rejected this claim.

2. We also affirm the district court's denial of Archer's claim of ineffective assistance of counsel based on his allegation that his counsel at the plea stage failed to advise him of § 654 and its potential application to his charges. Even if we assume that Archer's counsel was deficient, Archer has not demonstrated prejudice. *See Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984) (holding that to prevail on a claim of ineffective assistance of counsel, a

defendant must show that "counsel's representation fell below an objective standard of reasonableness" and "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"); *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) (holding that in the context of a plea, to demonstrate prejudice, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial"). Given that Archer was facing a possible indeterminate life sentence if he proceeded to trial, the California Court of Appeal was not "objectively unreasonable" in concluding that Archer failed to present evidence demonstrating a reasonable probability that he would have rejected the plea deal if he had known about § 654's possible application to his charges. *See White v. Woodall*, 572 U.S. 415, 419 (2014) (An unreasonable application must be "objectively unreasonable, not merely wrong; even clear error will not suffice.") (internal quotation marks omitted).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

VAUGHN S. ARCHER, Petitioner, v. DANIEL PARAMO, Warden, Respondent.	NO. CV 16-00445-JLS (AS) **ORDER ACCEPTING FINDINGS,** **CONCLUSIONS AND RECOMMENDATIONS** **OF UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. section 636, the Court has reviewed the Petition, all of the records herein and the attached Report and Recommendation of United States Magistrate Judge. After having made a *de novo* determination of the portions of the initial Report and Recommendation to which objections were directed, the Court concurs with and accepts the findings and conclusions of the Magistrate Judge in the Final Report and Recommendation.

IT IS ORDERED that Judgment be entered denying and dismissing the Petition with prejudice.

IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the Magistrate Judge's Report and Recommendation and the Judgment herein on counsel for Petitioner and counsel for Respondent.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: September 5, 2016.

JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

VAUGHN S. ARCHER, Petitioner, v. DANIEL PARAMO, Warden, Respondent.	NO. CV 16-00445-JLS (AS) **JUDGMENT**

Pursuant to the Order Accepting Findings, Conclusions and Recommendations of United States Magistrate Judge,

IT IS ADJUDGED that the Petition is denied and dismissed with prejudice.

DATED: September 5,2016

JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

VAUGHN S. ARCHER, Petitioner, v. DANIEL PARAMO, Warden, Respondent.	Case No. CV 16-00445-JLS (AS) **REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This Report and Recommendation is submitted to the Honorable Josephine L. Staton, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. INTRODUCTION

On December 31, 2015, Vaughn S. Archer ("Petitioner"), a California state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254

("Petition") in the United States District Court for the Southern District of California. (Docket Entry No. 1). On January 12, 2016, this action was transferred to the United States District Court for the Central District of California. (Docket Entry No. 2). On March 30, 2016, Respondent filed an Answer to the Petition ("Answer"). (Docket Entry No. 10). On May 5, 2016, Petitioner filed a Traverse ("Traverse"). (Docket Entry No. 13).

For the reasons stated below, it is recommended that the Petition be DENIED and that this action be DISMISSED with prejudice.

II. PROCEDURAL HISTORY

On November 1, 2012, Petitioner entered a no contest plea in Los Angeles County Superior Court to two counts of second degree robbery in violation of California Penal Code ("P.C.") § 211 (Counts 1 and 3), two counts of carjacking in violation of P.C. § 215(a) (Counts 2 and 4), one count of assault by means likely to produce great bodily injury in violation of P.C. § 245(a)(1) (Count 5), and two counts of assault with a deadly weapon in violation of P.C. § 245(a)(1) (Counts 6 and 7), and admitted the following special allegations: (1) he served four prior prison terms (P.C. § 667.5(b)); (2) during the commission of Counts 1, 2, 5 and 7 he personally inflicted great bodily injury upon the victims (P.C. § 12022.7(a)); and (3) during the commission of Counts 3 and 4 he personally used a deadly and dangerous weapon (P.C. § 12022(b)(2)). (See Clerk's Transcript ["CT"] 124-26; Augmented Reporter's Transcript

["RT"] F-14--F-27).[1] On July 31, 2013, the court denied Petitioner's motion to withdraw his plea. (See CT 211-12; 2 RT N-58--N-61). On August 2, 2013, in accordance with the plea agreement, the court sentenced Petitioner to state prison for a total of 27 years and 4 months,[2] and then granted the prosecution's motion to dismiss one count of battery with serious bodily injury (Count 8) and one count of kidnaping to commit another crime (Count 9). (See CT 120, 233-41; 2 RT 0-3--0-6).

Petitioner appealed his convictions to the California Court of Appeal which affirmed the Judgment on September 15, 2014. (See Respondent's Notice of Lodging ["Lodgment"] Nos. 5-8). On October 14, 2014, the California Court of Appeal modified the September 15, 2014 Opinion, without any change in the Judgment. (Lodgment 9). Petitioner then filed a Petition for Review with the California Supreme Court, which was summarily denied on January 14, 2015. (Lodgments 10-11).

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[1] Prior to Petitioner's plea, the court granted the prosecution's motion to dismiss the special allegations concerning a prior serious or violent felony conviction and prior serious felony convictions. (See CT 122, 126; 2 RT F-5).

[2] Petitioner's sentence consisted of the following: 9 years on Count 4, plus a consecutive term of 3 years for the personal use of a deadly weapon finding; a consecutive term of 1 year on Count 1, plus a consecutive term of 1 year for the personal infliction of great bodily injury finding; a consecutive term of 1 year 8 months on Count 2, plus a consecutive term of 1 year for the personal infliction of great bodily injury finding; a consecutive term of 1 year on Count 3, plus a consecutive term of 8 months for the personal use of a deadly weapon finding; a consecutive term of 1 year on Count 5, plus a consecutive term of 1 year for the personal infliction of great bodily injury finding; a consecutive term of 1 year on Count 6; a consecutive term of 1 year on Count 7, plus a consecutive term of 1 year for the personal infliction of great bodily injury finding; and four consecutive terms of 1 year for the prior prison term findings.

III. SUMMARY OF THE PROCEEDINGS

The following summary is taken from the "Factual and Procedural Background" section of the California Court of Appeal Opinion:

A. *The Crimes*[3]

At 6:00 a.m. on October 27, 2011, Hagi Ahmad was sitting in his car with the windows up in front of a convenience store before his class at Los Angeles Trade Technical College. While he was waiting for the store to open so he could buy some food for breakfast before school, he saw [Petitioner] "punching" the car windows and saying something Ahmad could not hear. When Ahmad opened the car door and asked him what he wanted, [Petitioner] pulled on the door and said, "Okay, I own you now. Give me my car keys." Ahmad tried to close the door and said, "This is not your car. This is my car." [Petitioner] overpowered Ahmad, took the key out of his hand, punched him, and threw him on the street. [Petitioner] then took Ahmad over to the sidewalk and punched and kicked him in his head, chest, and leg.[4]

[Petitioner] left, only to return and start hitting and kicking Ahmad again. [Petitioner] took Ahmad's watch and cell phone and tried unsuccessfully to take the rings off his

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[3] [The summary of the crimes was based on testimony at the preliminary hearing on December 7, 2011].

[4] [See CT 5-8, 46-47].

fingers. [Petitioner] then dragged Ahmad by the hood of his sweatshirt about a block and left him in the middle of the intersection, where a car almost hit him. [Petitioner] went back to Ahmad's car and drove it away.[5]

Approximately half an hour later, Jon Murga was withdrawing cash from an automated teller machine. As he drove to the loading dock of a produce distributor to pick up some produce for a grocery store he owned, he noticed a car following him. Murga parked near the loading dock and was putting down the seats in his car when [Petitioner] approached. [Petitioner] was very animated and was trying to engage Murga in conversation, but Murga ignored him. [Petitioner] then demanded Murga's car keys. He grabbed a crowbar that was on the backseat of Murga's car and started chasing Murga with the crowbar. [Petitioner] approached Murga swinging his fists, and Murga ran into the middle of the street and tripped on a pothole. [Petitioner] assaulted him and took the car keys.[6]

Murga called for help and a dispatcher from the produce distributor, Kipp Skaden, came to his aid. [Petitioner] attacked Skaden and Murga with the crowbar and hit Skaden on the head and elbow. [Petitioner] then went back to Murga's

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[5] [See CT 8-12].

[6] [See CT 13-19, 37-39].

car and drove away. Murga's wallet and passport were in the car, along with clothing and other personal items. Skaden's injuries required stitches. The police recovered Murga's car, passport, and credit cards, as well as Ahmad's cell phone, at a hotel in Van Nuys, California, where [Petitioner] had gone after committing the crimes.[7]

The People, in the second amended information, charged [Petitioner] with nine counts: (1) second degree robbery (§ 211; Ahmad); (2) carjacking (§ 215, subd. (a); Ahmad); (3) second degree robbery (§ 211; Murga); (4) carjacking (§ 215, subd. (a); Murga); (5) assault with a deadly weapon (§ 245, subd. (a)(1); Ahmad); (6) assault with a deadly weapon (§ 245, subd. (a)(1); Murga); (7) assault with a deadly weapon (§ 245, subd. (a)(1); Skaden); (8) battery with serious bodily injury (§ 243, subd. (d); Ahmad); and (9) kidnapping to commit robbery (§ 209, subd. (b)(1); Ahmad). The information alleged with respect to counts 3, 4, 6, and 7 that [Petitioner] had used a deadly and dangerous weapon (a tire iron against Murga and Skaden) pursuant to section 12022, subdivision (b)(2), and with respect to count 7 that [Petitioner] had personally inflicted great bodily injury (on Skaden) pursuant to former section 12022.7, subdivision (a). The information further alleged with respect to counts 1, 2, 5, 8, and 9 that [Petitioner] had personally inflicted great bodily injury (on Ahmad) pursuant to section 12022.7, subdivision (a). The

[7] [See CT 19-22, 38-41, 45-46].

information also alleged that all counts other than count 5 were serious or violent felonies, and that [Petitioner] had suffered four prior convictions for which he had served prior prison terms (§ 667.5, subd. (b)).[8]

B. *The Plea Agreement*

On November 1, 2012, [Petitioner] appeared in court with his attorney. The People offered [Petitioner] 27 years and four months, and [Petitioner] responded with a counterproposal of 16 years. The trial court stated, "It's not 'Let's Make a Deal.' Their offer is 27 years, 4 months, which is what you're facing on everything other than the kidnapping. For kidnapping, you're facing life in prison. If you're convicted on everything, then the sentence you're facing is 34 years, 4 months to life." [Petitioner] stated, "That's a lot of time for a person that does not have no strikes or no prior violence." The trial court stated, "I agree. It's a lot of time. It's easy for us to say. We don't have to do the time. . . . But on the other hand, you have to face the fact that, if you're convicted, you're looking at 34 years, 4 months to life. Basically, you're going to die in prison. The People's offer would be to allow you to have a life after you do your time." The trial court added that at 85 percent, [Petitioner] would "have to do 23 years and . . . a fraction [of] years before you would be paroled. If you're convicted on

[8] [See CT 115-23].

everything, there's no guarantee you would ever be paroled." After a pause in the proceedings, the court stated, "I can't get to a number less than 27 [years], 4 [months] on an open plea."[9]

After a recess, counsel for [Petitioner] told the court that [Petitioner] wanted to accept the People's offer. The court stated that it would postpone sentencing to allow [Petitioner] to obtain his general equivalency diploma (G.E.D.) and participate in a merit program. The court then turned to the People's second amended information, which required several corrections. The most significant correction was that the parties had confirmed that [Petitioner] had no prior strikes, and therefore the People moved to dismiss the strike allegations that the People had alleged in a prior information. The court granted the motion to dismiss, stating, "now we're going to strike those [allegations] so that he doesn't have all of those pending, and the calculation I had . . . made as to his maximum time was on —- assuming those are stricken." Counsel for [Petitioner] said his client would be admitting the four prior prison term allegations. The trial court then stated that [Petitioner] would receive a total sentence of 27 years, four months.[10][11][12]

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[9] [See 2 RT F-1--F-4].

[10] The court calculated this sentence as follows: 12 years on count 4, carjacking (principal term, Murga) (high term of nine years plus three years for the personal use of a deadly weapon); two years on count 1, second degree robbery (Ahmad) (one-third the middle term of

(continued...)

The prosecutor asked [Petitioner] a series of questions about his understanding of the proposed disposition and gave him various advisements. [Petitioner] acknowledged that he understood the proposed disposition and had no questions, that he had spoken with his attorney and wanted to go forward with the proposed disposition, and that his no contest plea was the same as a guilty plea. [Petitioner] was advised and acknowledged that as a result of his plea he was "going to have lots of strikes" and the commission of another crime could result in "an immense sentence." [Petitioner] was further advised and stated he understood that when he was released from prison he would be on parole for a period of three years, that he would have to pay restitution, and that he would be eligible for conduct credit of up to 15 percent while he was imprisoned. When asked if he had any questions, however, [Petitioner] made a reference to the amended

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[10] (...continued)
three years plus one year for infliction of great bodily injury); two years eight months on count 2, carjacking (Ahmad) (one-third the middle term of five years plus one year for infliction of great bodily injury); one year eight months on count 3, second degree robbery (Murga) (one-third the middle term of three years plus eight months for personal use of a deadly weapon); two years on count 5, assault with a deadly weapon (Ahmad) (one-third the middle term of three years plus one year for infliction of great bodily injury); one year on count 6, assault with a deadly weapon (Murga) (one-third the middle term of three years); two years on count 7, assault with a deadly weapon (Skaden) (one-third the middle term of three years plus one year for infliction of great bodily injury); and four years for four prior prison terms. Under the plea agreement, the court would dismiss counts 8 and 9.

[11] [See 2 RT F-4–-F-8].

[12] [Prior to asking Petitioner about his understanding of a proposed disposition, Petitioner's counsel and the trial court discussed the accuracy of the four prior prison term allegations, and the trial court addressed Petitioner's concerns about returning to court, presumably for sentencing. (See 2 RT F-14).]

information and stated that he did not "feel right with this" and he was "in the dark." [Petitioner] stated, "Now, I feel that, if I don't take this deal, then I'm going to get life. So I feel like I have no choice but to take this case." The trial court stated, "If you're convicted of all counts, you're facing 34 years, 4 months to life. That's correct." [Petitioner] stated he felt pressured into taking the deal and was expressing his concerns.[13]

After a recess, counsel for [Petitioner] reported that [Petitioner] wanted to accept the offer and continue with his plea. [Petitioner] acknowledged that no one had used any force to make him enter his plea or made him any promises about what would happen to him or his case other than what had been discussed in court. [Petitioner] stated that he understood and gave up his rights to a speedy trial, to confront and cross-examine witnesses, against self-incrimination, to present a defense, and to use the subpoena power of the court at no expense to him.[14] [Petitioner] then entered his pleas of no contest and admitted the remaining allegations. The court found, "Having heard the defendant being advised and questioned concerning his rights and the consequences of his plea and being satisfied with the answers to those questions, and the defendant being represented by counsel and consulting with counsel as he deemed appropriate, I find that the

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[13] [See CT F-14–F-20].

[14] Counsel for [Petitioner] joined in the waivers and concurred in the plea.

defendant has knowingly, expressly, intelligently and understandingly waived and given up his rights and entered a plea that's, in fact, free and voluntary and made with an understanding of the nature of the plea and the consequences thereof. I accept his plea, and he's convicted upon his plea." The court, after a time waiver, set probation and sentencing for February 19, 2013. [Petitioner] stated that he wanted "to apologize for [his] attitude. It's a lot of time." The court stated, "No problem. Your apology's accepted." The court concluded, "[Petitioner], I'll see you back in February. You keep working on those programs, and I hope things work out on them for you."[15]

C. *The Motion to Withdraw the Plea*

On February 19, 2013, [Petitioner] appeared in court with his attorney. The trial court indicated it was prepared to impose the agreed-upon sentence of 27 years, four months. Counsel for [Petitioner] advised the court, however, that [Petitioner] wanted "to make a motion to withdraw his plea at this point" because "he has received information that there is new evidence." The court stated, "It sounds like buyer's remorse to be honest. I will put it over and give you an opportunity to make a presentation to the court."[16]

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[15] [See Augmented RT F-20--F-28; CT 124-26].

[16] [See 2 RT G-1--G-2; CT 128].

> On March 25, 2013 [Petitioner] made a motion to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806, 835–836 [95 S.Ct. 2525, 45 L.Ed.2d 562]. The court granted the motion and gave [Petitioner] time to prepare and file his motion to withdraw his plea.[17]
>
> On July 8, 2013,[18] [Petitioner] filed his motion to withdraw and change his plea, based on "fraud, duress, denial of effective assistance of counsel, and mistake ignorance or inadvertence or another factor overreaching the exercise of clear and free judgment." [Petitioner] asserted that the trial court, the prosecutor, and defense counsel "used fraud [and] duress to illegally induce [an] involuntary plea of trickery and deception and illegal threats of 34 years to life." [Petitioner] stated in his declaration that under section 654 the court could not punish him for both assault and robbery, that his "maximum potential time was miscalculated" as "33 years to life," and that he agreed to 27 years and four months because of the threat that he "would never get out unless I took this time." [Petitioner] argued in his memorandum of points and authorities that his former attorney's "permitting him to enter a plea that resulted in years difference of imprisonment constitutes a [dereliction] of his duty to ensure defendant entered his plea with full

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[17] [See 2 RT I-1--I-7; CT 134-41].

[18] [There were other court proceedings on May 10, 2013, May 15, 2013 and June 17, 2013. (See 2 RT J-1--L-8; CT 152-53, 158-59, 161-62)].

awareness of the relevant circumstances and the likely consequences of his actions." [Petitioner] referenced the trial court's statement that he was "going to die in prison" and his statement at the hearing that he felt pressured into pleading guilty.[19]

The People opposed the motion. The People argued that [Petitioner] "has not provided one specific instance" of "fraud, mistake, inadvertence, ignorance, and ineffective assistance of counsel," and "has not pointed to any specific fact or piece of evidence that caused him to be misled or is an indication of fraud."[20]

After [Petitioner] filed a peremptory challenge to the trial judge who had been hearing his case (Hon. William C. Ryan),a different judge (Hon. Carol H. Rehm, Jr.) heard [Petitioner's] motion to withdraw his plea.[21] On July 31, 2013, the trial court denied [Petitioner's] motion. The court stated: "Nothing on this record demonstrates how, [Petitioner], you would have prevailed had you gone to trial or what evidence existed that might exonerate you. Nothing on this record demonstrates that the People . . . offered you a better disposition or that they would have made such an offer. Nothing on this record demonstrates that you were entering

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19 [See CT 164-82].

20 [See CT 185-87].

21 [See CT 163, 183; 2 RT M-6--M-11].

> your plea under duress or trickery or fraud. Everything was explained to you. You knew the maximum potential you faced if you went to trial. You said you understood everything and this was the disposition that you wanted. There's nothing on this record that indicates anything your attorney did prejudiced you. Nothing demonstrates that your attorney's conduct in this matter fell below the prevailing standard for the defense. And erroneous advice of counsel does not require a grant of a motion to withdraw. . . . So the bottom line here, [Petitioner], is that you've demonstrated an insufficient basis to grant your motion, and your motion is denied."[22][23]
>
> On August 2, 2013 the trial court sentenced [Petitioner] pursuant to the plea agreement.[24]

People v. Archer, 230 Cal.App.4th 693, 696-701 (2014), as modified (October 14, 2014) (footnotes in original, bracketed footnotes added); see Lodgment No. 8 at 2-8, No. 9 at 2 (footnotes in original, bracketed footnotes added).

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[22] [See 2 RT N-58--N-61; CT 211-12]

[23] [On August 9, 2013 (after sentencing), Petitioner's reply to the opposition to the motion to withdraw his plea was filed with the Los Angeles County Superior Court. Petitioner alleged he gave his reply to the prosecution on July 23, 2013. (See Supplemental CT 1-7)].

[24] [See 2 RT O-3--O-6; CT 233-41].

IV. PETITIONER'S CLAIMS

Petitioner raises the following claims for federal habeas relief:

Ground One: Petitioner's plea is invalid because the trial court failed to advise him of the direct consequences of his plea by misstating his maximum possible sentence. (Petition at 3-8[25]; Traverse at 3, 5-7).

Ground Two: Petitioner received ineffective assistance of counsel based on his trial counsel's failure to correct the trial court's misstatement of his possible maximum sentence and failure to correctly advise him of his possible maximum sentence. (Petition at 9-12; Traverse at 3, 5-7).

V. STANDARD OF REVIEW

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a federal court may not grant habeas relief on a claim adjudicated on its merits in state court unless that adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

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[25] The Court will cite page numbers of the Petition in the order in which they were submitted.

The term "clearly established Federal law" means "the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision." Lockyer v. Andrade, 538 U.S. 63, 71-72 (2003); see also Cullen v. Pinholster, 563 U.S. 170, 182 (2011); Williams v. Taylor, 529 U.S. 362, 412 (2000)("clearly established Federal law" consists of holdings, not dicta, of Supreme Court decisions "as of the time of the relevant state-court decision"). However, federal circuit law may still be persuasive authority in identifying "clearly established" Supreme Court law or in deciding when a state court unreasonably applied Supreme Court law. See Stanley v. Cullen, 633 F.3d 852, 859 (9th Cir. 2011); Tran v. Lindsey, 212 F.3d 1143, 1154 (9th Cir. 2000).

A state court decision is "contrary to" clearly established federal law if the decision applies a rule that contradicts the governing Supreme Court law or reaches a result that differs from a result the Supreme Court reached on "materially indistinguishable" facts. Early v. Packer, 537 U.S. 3, 8 (2002) (per curiam); Williams, supra, 529 U.S. at 405-06; see also Cullen v. Pinholster, supra ("To determine whether a particular decision is 'contrary to' then-established law, a federal court must consider whether the decision 'applies a rule that contradicts [such] law' and how the decision 'confronts [the] set of facts' that were before the state court."). When a state court decision adjudicating a claim is contrary to controlling Supreme Court law, the reviewing federal habeas court is "unconstrained by § 2254(d)(1)." Williams, supra, 529 U.S. at 406. However, the state court need not cite the controlling Supreme Court cases, "so long as neither the reasoning nor the result of the state-court decision contradicts them."

Early, supra.

A state court decision involves an "unreasonable application" of clearly established federal law "if the state court either unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." Williams, supra, 529 U.S. at 407; Cullen v. Pinholster, supra; Woodford v. Visciotti, 537 U.S. 19, 24-27 (2002) (per curiam); Moore v. Helling, 763 F.3d 1011, 1016 (9th Cir. 2014)(courts may extend Supreme Court rulings to new sets of facts on habeas review "only if it is 'beyond doubt' that the ruling apply to the new situation or set of facts."), cert. denied, 135 S.Ct. 2361 (2015). A federal habeas court may not overrule a state court decision based on the federal court's independent determination that the state court's application of governing law was incorrect, erroneous or even "clear error." Lockyer, supra, 538 U.S. at 75; Harrington v. Richter, 562 U.S. 86, 101 (2011)("A state court's determination that a claim lacks merit precludes federal relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision."). Rather, a decision may be rejected only if the state court's application of Supreme Court law was "objectively unreasonable." Lockyer, supra; Woodford, supra; Williams, supra, 529 U.S. at 409; see also Taylor v. Maddox, 366 F.3d 992, 999-1000 (9th Cir. 2004)("objectively unreasonable" standard also applies to state court factual determinations).

When a state court decision is found to be contrary to or an unreasonable application of clearly established Supreme Court law, a

federal habeas court "must then resolve the [constitutional] claim without the deference AEDPA otherwise requires." Panetti v. Quarterman, 551 U.S. 930, 953 (2007); see also Williams, supra, 529 U.S. at 406 (when a state court decision is contrary to controlling Supreme Court law, a federal habeas court is "unconstrained by § 2254(d)(1)"). In other words, if a § 2254(d)(1) error occurs, the constitutional claim raised must be considered *de novo*. Frantz v. Hazey, 513 F.3d 1002, 1012-15 (9th Cir. 2008); see also Rompilla v. Beard, 545 U.S. 374, 390 (2005).

Petitioner raised Grounds One and Two in his Petition for Review to the California Supreme Court, which denied the claims without comment or citation to authority. (See Lodgment No. 10-11). The Court "looks through" the California Supreme Court's silent denial to the last reasoned decision as the basis for the state court's judgment. See Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991) ("Where there has been one reasoned state judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground."); Cannedy v. Adams, 706 F.3d 1148, 1159 (9th Cir. 2013) ("[W]e conclude that *Richter* does not change our practice of 'looking through' summary denials to the last reasoned decision – whether those denials are on the merits or denials of discretionary review." (footnote omitted)), as amended, 733 F.3d 794 (9th Cir. 2013), cert. denied, 134 S.Ct. 1001 (2014). Therefore, in addressing Grounds One and Two, the Court will consider the California Court of Appeal's reasoned opinion (Lodgment Nos. 8-9). See Berghuis v. Thompkins, 560 U.S. 370, 380 (2010).

VI. DISCUSSION

A. Validity Of Plea

In Ground One, Petitioner contends that his plea was not valid because the trial court erred in advising him that if he was convicted of all counts he faced a maximum possible prison sentence of 34 years 4 months. Petitioner claims that the trial court failed to take into account the possibility of stayed punishments for offenses which occurred during the same course of action (i.e., assault and robbery) under P.C. § 654[26], and that he would not have pled no contest if he had known his maximum possible prison sentence was 23 years to life. (Petition at 3-8; Traverse at 3, 5-7; see also Lodgment 5 at 8 ["Had appellant been convicted following trial, Penal Code Section 654 would have required staying sentence on Counts 1, 3, 5 and 6; thus the maximum term appellant faced was 23 years to life, rather than the term of 34 years and 8 months to life as stated by the trial court."]).

1. The California Court Of Appeal's Opinion

The California Court of Appeal found that the court did not abuse its discretion in denying Petitioner's motion to withdraw his plea, stating:

> Failing to explain to [Petitioner] the possible effects

[26] P.C. § 654(a) provides in pertinent part that "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

section 654 might have on his sentence was not a mistake, let alone a mistake that overcame [Petitioner's] exercise of free judgment, nor did it cause [Petitioner] to operate in ignorance when he entered his plea. Section 654 gives the trial court the authority "'to impose punishment for the offense that it determines, under the facts of the case, constituted the defendant's "primary objective"' keeping in mind the overall purpose of section 654. [Citation.]" (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 268 [104 Cal.Rptr.2d 641].) The court must stay execution of sentence on any convictions arising out of the same course of conduct and committed with the same objective. (*People v. McCoy* (2012) 208 Cal.App.4th 1333, 1338 [146 Cal.Rptr.3d 469].)

Because "[t]he trial court has broad latitude in determining whether section 654, subdivision (a) applies in a given case" (*People v. Garcia* (2008) 167 Cal.App.4th 1550, 1564 [85 Cal.Rptr.3d 155]), the court cannot predict in advance how it will rule at sentencing. (See *People v. Ortiz* (2012) 208 Cal.App.4th 1354, 1378 [145 Cal.Rptr.3d 907] ["'[w]hether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination'"]; *People v. Tarris* (2009) 180 Cal.App.4th 612, 626 [103 Cal.Rptr.3d 278] ["'[t]he question whether . . . section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination'"].) The trial court has no obligation or even

ability to determine how it (or another trial court) will exercise its discretion at a future stage of the proceedings.

Moreover, the nature of the inquiry under section 654 is intensely factual and cannot be determined in advance, particularly where, as here, there has not been a trial. "'Section 654 precludes multiple punishment for a single act or indivisible course of conduct punishable under more than one criminal statute. Whether a course of conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the "intent and objective" of the actor.' [Citation.]" (*People v. Retanan* (2007) 154 Cal.App.4th 1219, 1229 [65 Cal.Rptr.3d 177].) "'The defendant's intent and objective present factual questions for the trial court. . . .' [Citation.]" (*People v. Petronella* (2013) 218 Cal.App.4th 945, 964 [160 Cal.Rptr.3d 144].) The trial court usually makes these determinations after hearing all of the facts and circumstances of the case at trial. (See *People v. Ross* (1988) 201 Cal.App.3d 1232, 1240 [247 Cal.Rptr. 827]["[t]he factual questions that are involved in determining the applicability of the statute—for example, whether the defendant held multiple criminal objectives—will in the vast majority of cases be resolved by the sentencing judge on the basis of the evidence received during trial"].) Even where, as here, the defendant enters a guilty plea and there is no trial, the trial court has the authority to conduct an evidentiary hearing to determine whether and how to apply section 654. "[W]here the evidence produced during trial

sheds insufficient light on the [section] 654 issues or where, as here, a guilty plea is entered and there is no trial," the trial court may "hold an evidentiary hearing to establish an otherwise nonexistent factual basis for a necessary sentencing decision" under section 654. (*Ross*, *supra*, at pp. 1240–1241, 247 Cal.Rptr. 827.) As [Petitioner] concedes, "the applicability of . . . section 654 can be somewhat tricky and is dependent on the particular facts of the case."

The applicability and operation of section 654 in the absence of a trial or evidentiary hearing is particularly problematic in this case because of the multiple incidents of criminal activity by [Petitioner] and the several instances where [Petitioner] attacked, paused, and resumed his assault on his victims. With respect to Ahmad, the testimony at the preliminary hearing was that Archer (1) beat and punched Ahmad and took his car keys; (2) dragged Ahmad to the sidewalk and hit and kicked him there; (3) left and then returned sometime later to attack Ahmad again; (4) took Ahmad's watch and cell phone and attempted to steal his rings; and (5) dragged Ahmad into the middle of the street where a car almost ran him over.[27] With respect to Murga, the testimony was that [Petitioner] (1) assaulted Murga with a crowbar; (2) took his car keys after he fell; (3) attacked Murga a second time and attacked Skaden; and (4) took Murga's car, stealing his wallet

[27] [See CT 5-12, 46-47].

and other personal items with it.[28] Section 654 very well may have applied to some of the charges against [Petitioner]. But to calculate the precise effect of section 654 on [Petitioner's] sentence at the time of the entry of his plea, without the benefit of a trial or evidentiary hearing, would be speculative. The trial court's failure to give an advisory opinion on the effect of section 654 on [Petitioner's] maximum sentence, before hearing all of the evidence either at trial or an evidentiary hearing, was not clear and convincing evidence of good cause under section 1018 for [Petitioner] to withdraw his plea. (See *People v. Nocelotl* (2012) 211 Cal.App.4th 1091, 1096 [149 Cal.Rptr.3d 477] ["'"burden is on the defendant to present clear and convincing evidence the ends of justice would be subserved by permitting a change of plea to not guilty"'"].)

Even [Petitioner's] proposed anticipatory application of section 654 is premised on speculation. For example, [Petitioner] asserts that "the five counts involving Mr. Ahmad must be broken up into two separate incidents," and had [Petitioner] "been convicted following trial any sentence on counts [1], [5], and [8] would have to be stayed." [Petitioner] states that, "To the extent that the assault (count [5]) and/or the battery (count [8]) involved the altercation immediately following [Petitioner] throwing Mr. Ahmad out of the car, these counts would be 'folded into' the

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[28] [See CT 13-19, 37-39, 45-46].

carjacking alleged in count [2]." Perhaps, but perhaps not. First, it is possible that [Petitioner's] crimes against Ahmad would be "broken up" into more than "two separate incidents." The preliminary hearing testimony suggests that [Petitioner] (1) used force to gain possession of Ahmad's car, (2) took Ahmad to the sidewalk and assaulted and battered him again after achieving his goal of obtaining Ahmad's car, (3) left Ahmad only to return and assault and batter him some more. Thus, depending on what the evidence would have been at trial, [Petitioner] may have had more than two intents and objectives just with respect to Ahmad. Similarly, [Petitioner] asserts with respect to Murga that he "could not be separately sentenced for the carjacking and the assault, counts [4] and [6]," because "the evidence shows that the assault on Mr. Murga was no more than the force necessary to achieve the goal of carjacking." Again, not necessarily. According to the testimony at the preliminary hearing, [Petitioner] (1) used force to obtain Murga's car keys after Murga fell in the pothole, and then, rather than driving away, (2) commenced a second attack when Skaden attempted to assist Murga. The evidence at trial could show that in engaging in this conduct, [Petitioner] had two intents and objectives: stealing Murga's car and, once he had accomplished that by force, using additional force to inflict further injury on Murga (as [Petitioner] had with Ahmad).

Nor, contrary to [Petitioner's] assertion, did the trial court's failure to perform a section 654 analysis amount to a

failure to advise him of the consequences of his plea. The trial court must advise the defendant "'of the direct consequences of the conviction such as the permissible range of punishment provided by statute. . . .' [Citation.]" (*People v. Barella* (1999) 20 Cal.4th 261, 266, 84 Cal.Rptr.2d 248, 975 P.2d 37; see *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605 [119 Cal.Rptr. 302, 531 P.2d 1086].) In order to properly advise [Petitioner] of the maximum of the statutory range of punishment, the trial court had to disregard factors, like section 654, that might (or might not) reduce [Petitioner's] sentence.

People v. Goodwillie (2007) 147 Cal.App.4th 695 [54 Cal.Rptr.3d 601], cited by [Petitioner], is distinguishable. In that case the court and the prosecutor erroneously advised the defendant in plea discussions that the maximum conduct credit the defendant could earn in prison was 15 percent, when in fact the maximum conduct credit the defendant could earn was 50 percent. (*Id.* at pp. 731–733, 54 Cal.Rptr.3d 601.) The defendant rejected the prosecutor's offer of five years four months, went to trial, and received an aggregate sentence of 10 years. (*Id.* at pp. 706, 732, 54 Cal.Rptr.3d 601.) The court held that "the court and the prosecutor had a duty not to misinform [the defendant] as to his potential eligibility for 50 percent conduct credits," and that providing the defendant with this "inaccurate information . . . caused him to reject an offer that was more favorable to him than the sentence he received after trial, and deprived him of the

opportunity to reach any other plea bargain." (Id. at p. 733, 54 Cal.Rptr.3d 601.) Unlike the conduct credit limitation in *Goodwillie*, which would have automatically and inexorably capped the defendant's credit at a certain percentage regardless of the defendant's actual conduct in prison, the effect of section 654 on a sentence is speculative and uncertain. (Cf. *People v. Barella*, *supra*, 20 Cal.4th at p. 272, 84 Cal.Rptr.2d 248, 975 P.2d 37 ["a defendant is not entitled to withdraw or set aside a guilty plea on the ground that the trial court, in accepting the plea, failed to advise the defendant of a limit on good-time or work-time credits available to the defendant"]; *People v. Zaidi* (2007) 147 Cal.App.4th 1470, 1486 [55 Cal.Rptr.3d 566] ["good time/work time credits and eligibility for parole . . . depend on unknowable events that occur after the defendant's incarceration" and "possible early release is speculative when the plea is taken and depends on facts that have not yet occurred"].)

Finally, even if the trial court had misadvised [Petitioner], [Petitioner] would not be entitled to withdraw his plea of guilty because he did not make a sufficient showing of prejudice. A defendant, on direct appeal or habeas, "is entitled to relief based upon a trial court's misadvisement only if the defendant establishes that he or she was prejudiced by the misadvisement, i.e., that the defendant would not have entered the plea of guilty had the trial court given a proper advisement." (*In re Moser*, *supra*, 6 Cal.4th at

p. 352, 24 Cal.Rptr.2d 723, 862 P.2d 723; see *People v. Breslin*, supra, 205 Cal.App.4th at p. 1416, 140 Cal.Rptr.3d 906["[t]he defendant must also show prejudice in that he or she would not have accepted the plea bargain had it not been for the mistake"].) Nowhere in his declaration in support of his motion to change his plea did [Petitioner] ever state that he would not have accepted the plea bargain had it not been for the claimed mistake. [Petitioner] stated in his declaration that he "pleaded guilty under duress and ignorance, . . . to 27 years 4 months . . . on threat from counsel that [he] would never get out unless [he] took this time," but he did not state that, had the court advised him of the possible effects of section 654, he would not have accepted the deal and would have insisted on going to trial. (See *In re J.V.* (2010) 181 Cal.App.4th 909, 914 [104 Cal.Rptr.3d 491] [the "bare assertion of prejudice is not enough"]; cf. *People v. Zaidi*, *supra*, 147 Cal.App.4th at pp. 1488–1489, 55 Cal.Rptr.3d 566 [defendant made more than "a naked assertion" of prejudice when he "supported his petition with a declaration that "[h]ad he known [registration as a sex offender] was a lifetime requirement, he would never have entered his plea and would have insisted on going to trial"].)

[Petitioner] cites *In re Carabes* (1983) 144 Cal.App.3d 927 [193 Cal.Rptr. 65]. In that case the court found that the defendant had met his burden of showing prejudice because "[p]romptly after becoming aware of the parole consequence, [he] sought to withdraw his plea on the ground he was not

> aware of this consequence," from which "[t]he clear inference" was that "had he been aware of the parole consequence, he would not have pled guilty." (*Id.* at p. 933, 193 Cal.Rptr. 65.) Although there is no evidence of when [Petitioner] learned about the section 654 issue, the record suggests that he did not move "promptly." In addition, in this case the trial court accepted [Petitioner's] plea on November 1, 2012, and [Petitioner] did not indicate that he wanted to withdraw his plea until February 19, 2013, after the court had allowed him to continue in several educational programs. Although we do not address the People's argument that [Petitioner] is estopped from challenging the validity of his plea because he "accepted a benefit of the bargain," the fact that, as the People argue, [Petitioner] "was allowed to avoid the imposition of his sentence" to participate in the education programs further distinguishes *Carabes*.

People v. Archer, supra, 230 Cal.App.4th at 703-07) (bracketed footnotes added); see Lodgment No. 8 at 10-14, bracketed footnotes added).

2. Analysis

A guilty plea "operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, 'with sufficient awareness of the relevant circumstances and likely consequences.'" Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005) (quoting Brady v. United States, 397 U.S. 742, 748 (1970)); Boykin v. Alabama, 395 U.S. 238, 242-44 (1969). For a plea to be knowing, intelligent and

voluntary, the defendant must be advised of the direct, but not the collateral, consequences of the plea. Brady, supra, 397 U.S. at 755; Torrey v. Estelle, 842 F.2d 234, 235 (9th Cir. 1988); see also Bargas v. Burns, 179 F.3d 1207, 1216 (1999) ("A trial court is not required to inform a defendant of all of the consequences of his plea; instead this Court only will find a due process violation where the trial court failed to inform a defendant of the *direct* consequences of his plea, as opposed to the collateral consequences." (italics in original)). A direct consequence is one that has "a definite, immediate and largely automatic effect on the range of the defendant's punishment[.]" Torrey v. Estelle, supra, 842 F.2d at 236 (citation omitted). "Before a court may accept a defendant's guilty plea, the defendant must be advised of the 'range of allowable punishment' that will result from his plea," including "the maximum punishment provided by law." Id. at 235-36 (citations omitted); see also Little v. Crawford, 449 F.3d 1075, 1080 (9th Cir. 2006) ("The essential ingredient is notice of 'the maximum possible penalty provided by law.'") (citation omitted). The relevant inquiry is whether Petitioner's guilty plea was voluntary and intelligent under the totality of the circumstances. See North Carolina v. Alford, 400 U.S. 25, 25, 31 (1970); Brady, supra, 397 U.S. at 742. "A habeas petitioner bears the burden of establishing that his guilty plea was not voluntary and knowing." Little v. Crawford, supra (citing Parke v. Raley, 506 U.S. 20, 31-34 (1992)).

The California Court of Appeal found (see Lodgment No. 8 at 13), that the trial court properly provided Petitioner with notice of the maximum possible penalty provided by law. See Little v. Crawford, supra (finding that the petitioner's plea was knowing and voluntary, in part,

because the petitioner was aware of the "maximum penalty the court could impose"); Torrey v. Estelle, supra, 842 F.2d at 236 (direct consequences of a plea include "the maximum punishment provided by law"); Barrios v. Dexter, 2014 WL 6669312, *20 (C.D. Cal. Aug. 22, 2014) (""In this case, because petitioner was informed of the maximum *possible* sentence, the Court concludes that petitioner had the necessary information to enter an informed and intelligent plea); Corsetti v. McGrath, 2004 WL 724951, *7 (N.D. Cal. March 26, 2004) ("Corsetti was advised of the maximum prison term he faced and that was all that was constitutionally required with regard to the length of his prison sentence.").

As the California Court of Appeal noted (see Lodgment No. 8 at 10-13), it is not clear whether P.C. § 654 would have barred multiple punishments for robbery, carjacking and assault as to Ahmad and Murga as a matter of law. Petitioner's actions as to each Ahmad and Murga may not have "constituted one act" and may not have "constituted an indivisible transaction." See People v. Lewis, 43 Cal.4th 415, 519 (2008) (P.C. § 654 applies "not only where there was one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction."); Neil v. State, 55 Cal.2d 11, 19 (1960) ("Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one."); People v. Andra, 156 Cal.App.4th 638, 640 (2007) ("The defendant's intent and objective present factual questions for the trial court . . . ."). The facts

before the court at the time of the plea -- the preliminary hearing testimony concerning Petitioner's actions against Ahmad, specifically, beating and punching him and taking his car keys, dragging him to the sidewalk and hitting and kicking him there, leaving and then returning to attack him again, taking his watch and cell phone and trying to steal his rings, and dragging him into the middle of the street where he was almost hit by a car (see CT 5-12, 46-47), and the preliminary hearing testimony concerning Petitioner's actions against Murga, specifically, assaulting him with a crowbar, taking his car keys after he fell, attacking him a second time and then attacking Skaden, and taking Murga's car with his personal items (see CT 13-19, 37-39, 45-56) -- showed multiple incidents of criminal activity by Petitioner and several incidents where Petitioner attacked, paused and resumed his assault on Ahmad and Murga. The California Court of Appeal properly found that, although P.C. § 654 may have applied to some of the charges against Petitioner, the court, without a trial or an evidentiary hearing, would not have been able to determine the precise effect of P.C. § 654 on Petitioner's sentence, and therefore any calculation about Petitioner's possible maximum sentence based on P.C. § 654 would have been speculative. See Barrios v. Dexter, supra ("Based on the foregoing evidence, it is not clear that sentencing on the possession of the firearm by a felony would be barred as a matter of law. . . . Accordingly, the Court cannot conclude that Cal.Penal Code § 654 would have clearly precluded a sentence on the conviction for possession of a firearm by a felon.").

Accordingly, the California Supreme Court's rejection of Petitioner's claim directed to the validity of his plea was neither

contrary to, nor an unreasonable application of, clearly established federal law.

B. Ineffective Assistance of Counsel

In Ground Two, Petitioner contends that his trial counsel was ineffective for failing to correct the court's misstatement of his possible maximum sentence and for failing to correctly advise him of his possible maximum sentence. (Petition at 9-12; Traverse at 3, 5-7).

When a petitioner claims that his guilty plea was the result of the ineffective assistance of counsel, he must first show that his "counsel's representation fell below an objective standard of reasonableness.'" Hill v. Lockhart, 474 U.S. 52, 57 (1984) (quoting Strickland v. Washington, 466 U.S. 668, 687-88 (1984)). A petitioner also "'must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Hill, supra (quoting Strickland, supra, 466 U.S. at 694). In the plea context, the inquiry with respect to "prejudice" is "whether counsel's constitutionally ineffective performance affected the plea process." Hill, supra, 474 U.S. at 59. "In other words, in order to satisfy the 'prejudice' requirement, the [petitioner] must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id.

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1. The California Court Of Appeal's Opinion

The California Court of Appeal addressed Petitioner's claim as follows:

> [Petitioner] is correct that he is entitled to effective assistance of counsel in determining whether to accept or reject a plea bargain. (See *Lafler v. Cooper* (2012) ––– U.S. –––– [132 S.Ct. 1376, 1387, 182 L.Ed.2d 398]; *In re Alvernaz* (1992) 2 Cal.4th 924, 933 [8 Cal.Rptr.2d 713, 830 P.2d 747]; *In re Vargas* (2000) 83 Cal.App.4th 1125, 1133 [100 Cal.Rptr.2d 265].) [Petitioner], however, was not denied effective assistance of counsel. As noted, the trial court did not misrepresent the maximum term [Petitioner] faced if convicted, so counsel for [Petitioner] was not ineffective for being silent in court in the face of a statement that was not a misrepresentation. Moreover, there is no evidence that [Petitioner] received incorrect advice that caused him to accept the plea deal. (See *In re Alvernaz*, *supra*, at p. 934, 8 Cal.Rptr.2d 713, 830 P.2d 747 ["in order successfully to challenge a guilty plea on the ground of ineffective assistance of counsel, a defendant must establish not only incompetent performance by counsel, but also a reasonable probability that, but for counsel's incompetence, the defendant would not have pleaded guilty and would have insisted on proceeding to trial"]; cf. *People v. Carter* (2003) 30 Cal.4th 1166, 1211 [135 Cal.Rptr.2d 553, 70 P.3d 981]["[i]f the record on appeal sheds no light on why counsel acted or

> failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation"].) [Petitioner] stated only that his trial counsel failed to advise him about section 654 "prior to plea of guilty."

People v. Archer, supra, 230 Cal.App.4th at 707; see Lodgment No. 8 at 16.

2. Analysis

The record supports the California Court of Appeal's finding that Petitioner failed to show "deficient performance." As discussed above, trial counsel was not ineffective for failing to correct the trial court's alleged misstatement of the maximum possible sentence that Petitioner could receive because the court did not misstate Petitioner's maximum possible sentence in light of P.C. § 654. Moreover, Petitioner has failed to specify what "correct" advice his trial counsel should have given him about his possible maximum sentence based on P.C. § 654. See Greenay v. Schriro, 653 F.3d 790, 804 (9th Cir. 2011) (A "cursory and vague claim cannot support habeas relief."); James v. Borg, 24 F.3d 20, 26 (9th Cir. 1994) ("Conclusory allegation which are not supported by a statement of specific facts do not warrant habeas relief.").

Petitioner's failure to make the requisite showing of "deficient performance" renders it unnecessary for the Court to address the "prejudice" issue. See Strickland, supra, 466 U.S. at 697; see also

Williams v. Calderon, 52 F.3d 1465, 1470 n.3 (9th Cir. 1995).

Accordingly, the California Supreme Court's rejection of Petitioner's ineffective assistance of trial counsel claim was neither contrary to, nor an unreasonable application of, clearly established federal law.

VII. RECOMMENDATION

For the reasons discussed above, it is recommended that the district court issue an Order: (1) approving and accepting this Report and Recommendation; (2) denying the Petition for Writ of Habeas Corpus; and (3) directing that Judgment be entered dismissing the action with prejudice.

DATED: May 31, 2016

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file Objections as provided in the Local Rules Governing the Duties of the Magistrate Judges and review by the District Judge whose initials appear in the docket number. No Notice of Appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the Judgment of the District Court.

APPENDIX E

JESSICA OWEN

Court of Appeal, Second Appellate District, Division Seven - No. B250502

S221503

CV 16-0445-JLS (AS)
Lodged Doc.#11
(Ordr Deny_S221503)

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

VAUGHN ARCHER, Defendant and Appellant.

The petition for review is denied.

SUPREME COURT
FILED

JAN 14 2015

Frank A. McGuire Clerk

Deputy

Docketed
Los Angeles

JAN 20 2015

By: T. Salas
No. LA2013610402

CANTIL-SAKAUYE
Chief Justice

APPENDIX F

Filed 9/15/14

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

VAUGHN ARCHER,

Defendant and Appellant.

B250502

(Los Angeles County
Super. Ct. No. BA390420)

APPEAL from an order of the Superior Court of Los Angeles County, Carol H. Rehm, Jr., Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Chung Mar and Jessica C. Owen, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Vaughn Archer appeals from the trial court's order denying his motion to withdraw his no contest plea. Archer contends that the trial court overstated the maximum sentence he faced if convicted on all nine of the charges against him when the court advised him that he faced a maximum sentence of 34 years, 4 months to life. Archer asserts that the trial court should have taken into account that Penal Code section 654[1] would have applied to stay the sentences on some of the charges, and that, considering section 654, the maximum sentence Archer actually faced was 23 years to life. Archer contends that had he known his maximum sentence was 23 years to life rather than 34 years, 4 months to life, he would not have accepted the negotiated disposition of 27 years, 4 months. We conclude the trial court did not abuse its discretion in denying Archer's motion to withdraw his plea, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Crimes*

At 6:00 a.m. on October 27, 2011 Hagi Ahmad was sitting in his car with the windows up in front of a convenience store before his class at Los Angeles Trade Technical College. While he was waiting for the store to open so he could buy some food for breakfast before school, he saw Archer "punching" the car windows and saying something Ahmad could not hear. When Ahmad opened the car door and asked him what he wanted, Archer pulled on the door and said, "Okay, I own you now. Give me my car keys." Ahmad tried to close the door and said, "This is not your car. This is my car." Archer overpowered Ahmad, took the key out of his hand, punched him, and threw him

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1 All further section references are to the Penal Code.

on the street. Archer then took Ahmad over to the sidewalk and punched and kicked him in his head, chest, and leg.

Archer left, only to return and start hitting and kicking Ahmad again. Archer took Ahmad's watch and cell phone and tried unsuccessfully to take the rings off his fingers. Archer then dragged Ahmad by the hood of his sweatshirt about a block and left him in the middle of the intersection, where a car almost hit him. Archer went back to Ahmad's car and drove it away.

Approximately half an hour later, Jon Murga was withdrawing cash from an automated teller machine. As he drove to the loading dock of a produce distributor to pick up some produce for a grocery store he owned, he noticed a car following him. Murga parked near the loading dock and was putting down the seats in his car when Archer approached. Archer was very animated and was trying to engage Murga in conversation, but Murga ignored him. Archer then demanded Murga's car keys. He grabbed a crowbar that was on the backseat of Murga's car and started chasing Murga with the crowbar. Archer approached Murga swinging his fists, and Murga ran into the middle of the street and tripped on a pothole. Archer assaulted him and took the car keys.

Murga called for help and a dispatcher from the produce distributor, Kipp Skaden, came to his aid. Archer attacked Skaden and Murga with the crowbar and hit Skaden on the head and elbow. Archer then went back to Murga's car and drove away. Murga's wallet and passport were in the car, along with clothing and other personal items. Skaden's injuries required stitches. The police recovered Murga's car, passport, and credits cards, as well as Ahmad's cell phone, at a hotel in Van Nuys, California, where Archer had gone after committing the crimes.

The People, in the second amended information, charged Archer with nine counts: (1) second degree robbery (§ 211; Ahmad); (2) carjacking (§ 215, subd. (a); Ahmad); (3) second degree robbery (§ 211; Murga); (4) carjacking (§ 215, subd. (a); Murga); (5) assault with a deadly weapon (§ 245, subd. (a)(1); Ahmad); (6) assault with a deadly weapon (§ 245, subd. (a)(1); Murga); (7) assault with a deadly weapon (§ 245, subd. (a)(1); Skaden); (8) battery with serious bodily injury (§ 243, subd. (d); Ahmad);

and (9) kidnapping to commit robbery (§ 209, subd. (b)(1); Ahmad). The information alleged with respect to counts 3, 4, 6, and 7 that Archer had used a deadly and dangerous weapon (a tire iron against Murga and Skaden) pursuant to section 12022, subdivision (b)(2), and with respect to count 7 that Archer had personally inflicted great bodily injury (on Skaden) pursuant to section 12022.7, subdivision (a). The information further alleged with respect to counts 1, 2, 5, 8, and 9 that Archer had personally inflicted great bodily injury (on Ahmad) pursuant to section 12022.7, subdivision (a). The information also alleged that all counts other than count 5 were serious or violent felonies, and that Archer had suffered four prior convictions for which he had served prior prison terms (§ 667.5, subd. (b)).

B. *The Plea Agreement*

On November 1, 2012 Archer appeared in court with his attorney. The People offered Archer 27 years and 4 months, and Archer responded with a counterproposal of 16 years. The trial court stated, "It's not 'Let's Make a Deal.' Their offer is 27 years, 4 months, which is what you're facing on everything other than the kidnapping. For kidnapping, you're facing life in prison. If you're convicted on everything, then the sentence you're facing is 34 years, 4 months to life." Archer stated, "That's a lot of time for a person that does not have no strikes or no prior violence." The trial court stated, "I agree. It's a lot of time. It's easy for us to say. We don't have to do the time. . . . But on the other hand, you have to face the fact that, if you're convicted, you're looking at 34 years, 4 months to life. Basically, you're going to die in prison. The People's offer would be to allow you to have a life after you do your time." The trial court added that at 85 percent, Archer would "have to do 23 years and . . . a fraction [of] years before you would be paroled. If you're convicted on everything, there's no guarantee you would ever be paroled." After a pause in the proceedings, the court stated, "I can't get to a number less than 27 [years], 4 [months] on an open plea."

After a recess, counsel for Archer told the court that Archer wanted to accept the People's offer. The court stated that it would postpone sentencing to allow Archer to

obtain his general equivalency diploma (G.E.D.) and participate in a merit program. The court then turned to the People's second amended information, which required several corrections. The most significant correction was that the parties had confirmed that Archer had no prior strikes, and therefore the People moved to dismiss the strike allegations that the People had alleged in a prior information. The court granted the motion to dismiss, stating, "now we're going to strike those [allegations] so that he doesn't have all of those pending, and the calculation I had . . . made as to his maximum time was on—assuming those are stricken." Counsel for Archer said his client would be admitting the four prior prison term allegations. The trial court then stated that Archer would receive a total sentence of 27 years, 4 months.[2]

The prosecutor asked Archer a series of questions about his understanding of the proposed disposition and gave him various advisements. Archer acknowledged that he understood the proposed disposition and had no questions, that he had spoken with his attorney and wanted to go forward with the proposed disposition, and that his no contest plea was the same as a guilty plea. Archer was advised and acknowledged that as a result of his plea he was "going to have lots of strikes" and the commission of another crime could result in "an immense sentence." Archer was further advised and stated he understood that when he was released from prison he would be on parole for a period of

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2 The court calculated this sentence as follows: 12 years on count 4, carjacking (principal term, Murga) (high term of nine years plus three years for the personal use of a deadly weapon); two years on count 1, second degree robbery (Ahmad) (one-third the middle term of three years plus one year for infliction of great bodily injury); two years, eight months on count 2, carjacking (Ahmad) (one-third the middle term of five years plus one year for infliction of great bodily injury); one year, eight months on count 3, second degree robbery (Murga) (one-third the middle term of three years plus eight months for personal use of a deadly weapon); two years on count 5, assault with a deadly weapon (Ahmad) (one-third the middle term of three years plus one year for infliction of great bodily injury); one year on count 6, assault with a deadly weapon (Murga) (one-third the middle term of three years); two years on count 7, assault with a deadly weapon (Skaden) (one-third the middle term of three years plus one year for infliction of great bodily injury); and four years for four prior prison terms. Under the plea agreement, the court would dismiss counts 8 and 9.

three years, that he would have to pay restitution, and that he would be eligible for conduct credit of up to 15 percent while he was imprisoned. When asked if he had any questions, however, Archer made a reference to the amended information and stated that he did not "feel right with this" and he was "in the dark." Archer stated, "Now, I feel that, if I don't take this deal, then I'm going to get life. So I feel like I have no choice but to take this case." The trial court stated, "If you're convicted of all counts, you're facing 34 years, 4 months to life. That's correct." Archer stated he felt pressured into taking the deal and was expressing his concerns.

After a recess, counsel for Archer reported that Archer wanted to accept the offer and continue with his plea. Archer acknowledged that no one had used any force to make him enter his plea or made him any promises about what would happen to him or his case other than what had been discussed in court. Archer stated that he understood and gave up his rights to a speedy trial, to confront and cross-examine witnesses, against self-incrimination, to present a defense, and to use the subpoena power of the court at no expense to him.[3] Archer then entered his pleas of no contest and admitted the remaining allegations. The court found, "Having heard the defendant being advised and questioned concerning his rights and the consequences of his plea and being satisfied with the answers to those questions, and the defendant being represented by counsel and consulting with counsel as he deemed appropriate, I find that the defendant has knowingly, expressly, intelligently and understandingly waived and given up his rights and entered a plea that's, in fact, free and voluntary and made with an understanding of the nature of the plea and the consequences thereof. I accept his plea, and he's convicted upon his plea." The court, after a time waiver, set probation and sentencing for February 19, 2013. Archer stated that he wanted "to apologize for [his] attitude. It's a lot of time." The court stated, "No problem. Your apology's accepted." The court concluded, "Mr. Archer, I'll see you back in February. You keep working on those programs, and I hope things work out on them for you."

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3 Counsel for Archer joined in the waivers and concurred in the plea.

C. *The Motion To Withdraw the Plea*

On February 19, 2013 Archer appeared in court with his attorney. The trial court indicated it was prepared to impose the agreed-upon sentence of 27 years, 4 months. Counsel for Archer advised the court, however, that Archer wanted "to make a motion to withdraw his plea at this point" because "he has received information that there is new evidence." The court stated, "It sounds like buyer's remorse to be honest. I will put it over and give you an opportunity to make a presentation to the court."

On March 25, 2013 Archer made a motion to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806, 835-836 [95 S.Ct. 2525, 45 L.Ed.2d 562]. The court granted the motion and gave Archer time to prepare and file his motion to withdraw his plea.

On July 8, 2013 Archer filed his motion to withdraw and change his plea, based on "fraud, duress, denial of effective assistance of counsel, and mistake ignorance or inadvertence or another factor overreaching the exercise of clear and free judgment." Archer asserted that the trial court, the prosecutor, and defense counsel "used fraud [and] duress to illegally induce [an] involuntary plea of trickery and deception and illegal threats of 34 years to life." Archer stated in his declaration that under section 654 the court could not punish him for both assault and robbery, that his "maximum potential time was miscalculated" as "33 years to life," and that he agreed to 27 years and 4 months because of the threat that he "would never get out unless I took this time." Archer argued in his memorandum of points and authorities that his former attorney's "permitting him to enter a plea that resulted in years difference of imprisonment constitutes a [dereliction] of his duty to ensure defendant entered his plea with full awareness of the relevant circumstances and the likely consequences of his actions." Archer referenced the trial court's statement that he was "going to die in prison" and his statement at the hearing that he felt pressured into pleading guilty.

The People opposed the motion. The People argued that Archer "has not provided one specific instance" of "fraud, mistake, inadvertence, ignorance, and ineffective

assistance of counsel," and "has not pointed to any specific fact or piece of evidence that caused him to be misled or is an indication of fraud."

After Archer filed a peremptory challenge to the trial judge who had been hearing his case, a different judge heard Archer's motion to withdraw his plea. On July 31, 2013 the trial court denied Archer's motion. The court stated: "Nothing on this record demonstrates how, Mr. Archer, you would have prevailed had you gone to trial or what evidence existed that might exonerate you. Nothing on this record demonstrates that the People . . . offered you a better disposition or that they would have made such an offer. Nothing on this record demonstrates that you were entering your plea under duress or trickery or fraud. Everything was explained to you. You knew the maximum potential you faced if you want to trial. You said you understood everything and this was the disposition that you wanted. There's nothing on this record that indicates anything your attorney did prejudiced you. Nothing demonstrates that your attorney's conduct in this matter fell below the prevailing standard for the defense. And erroneous advice of counsel does not require a grant of a motion to withdraw. . . . So the bottom line here, Mr. Archer, is that you've demonstrated an insufficient basis to grant your motion, and your motion is denied."

On August 2, 1013 the trial court sentenced Archer pursuant to the plea agreement. The court granted Archer's request for a certificate of probable cause. Archer filed a notice of appeal that same day.

DISCUSSION

Archer argues that the trial court "erred in denying his motion to withdraw his guilty plea" because the court misstated "the maximum term of imprisonment he faced if he went to trial" as 34 years, 4 months to life, when, if section 654 applied to some of the charges, the maximum term Archer faced was 23 years to life. Archer does not directly challenge the trial court's calculation of 34 years, 4 months to life as the maximum prison term, but he argues that the court should have applied section 654 in calculating his

potential maximum sentence and that had the court done so the court would have calculated, and advised Archer of, a lower maximum sentence. Archer contends that the trial court's failure to advise him of the effect section 654 could have on his maximum prison term violated his rights under section 1018,[4] and that the court's "substantial misstatement of the maximum term he faced if convicted as charged renders his plea subject to withdrawal." Archer asserts that he "sought to withdraw his guilty plea prior to the imposition of sentence, after learning of the true maximum term he faced if he were convicted after trial; a term significantly less onerous [than] stated by the court."

A prejudicial mistake in advising a defendant of his or her maximum possible sentence can constitute good cause for withdrawal of a plea. (See *In re Moser* (1993) 6 Cal.4th 342, 351-352; *People v. Johnson* (1995) 36 Cal.App.4th 1351, 1357.) We conclude, however, that in advising Archer of the maximum sentence he faced, the trial court did not have to determine what effect, if any, section 654 might have had on Archer's sentence had Archer proceeded to trial and been convicted on all charges and allegations.

A. *Burden of Proof and Standard of Review*

"A decision to deny a motion to withdraw a guilty plea '"rests in the sound discretion of the trial court"' and is final unless the defendant can show a clear abuse of that discretion. [Citation.] Moreover, a reviewing court must adopt the trial court's factual findings if substantial evidence supports them. [Citation.]" (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254; accord, *People v. Breslin* (2012) 205 Cal.App.4th 1409, 1416.) "'Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.' [Citation.]" (*People v. Weaver* (2004) 118 Cal.App.4th 131, 146.) "[T]he fact that a hearing court's ruling on a section 1018 motion

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[4] Section 1018 provides in pertinent part: "On application of the defendant at any time before judgment . . . the court may . . . for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted."

is reviewed by us under the 'abuse of discretion' standard appropriately results in our paying considerable deference to the hearing court's factual findings: "'All questions of the weight and sufficiency of the evidence are addressed, in the first instance, to the trier of fact, in this case, the trial judge.'" (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1460, fn. 4.)

B. *Archer Has Not Met His Burden of Showing the Trial Court Abused Its Discretion in Denying Archer's Motion To Withdraw His Plea*

A trial court may allow a defendant to withdraw his or her guilty or no contest plea under section 1018 for good cause shown by clear and convincing evidence. (See *People v. Williams* (1998) 17 Cal.4th 148, 167.) "To establish good cause to withdraw a guilty plea, the defendant must show by clear and convincing evidence that he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or duress." (*People v. Breslin*, *supra*, 205 Cal.App.4th at p. 1416; see *People v. Johnson* (2009) 47 Cal.4th 668, 679.) The defendant may not withdraw a plea because the defendant has changed his or her mind. (*People v. Nance*, *supra*, 1 Cal.App.4th at p. 1456; accord, *People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208.)

Failing to explain to Archer the possible effects section 654 might have on his sentence was not a mistake, let alone a mistake that overcame Archer's exercise of free judgment, nor did it cause Archer to operate in ignorance when he entered his plea. Section 654 gives the trial court the authority "'to impose punishment for the offense that it determines, under the facts of the case, constituted the defendant's "primary objective"' keeping in mind the overall purpose of section 654. [Citation.]" (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 268.) The court must stay execution of sentence on any convictions arising out of the same course of conduct and committed with the same objective. (*People v. McCoy* (2012) 208 Cal.App.4th 1333, 1338.)

Because "[t]he trial court has broad latitude in determining whether section 654, subdivision (a) applies in a given case" (*People v. Garcia* (2008) 167 Cal.App.4th 1550,

1564), the court cannot predict in advance how it will rule at sentencing. (See *People v. Ortiz* (2012) 208 Cal.App.4th 1354, 1378 ["'[w]hether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination'"]; *People v. Tarris* (2009) 180 Cal.App.4th 612, 626 ["'[t]he question whether . . . section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination'"].) The trial court has no obligation or even ability to determine how it (or another trial court) will exercise its discretion at a future stage of the proceedings.

Moreover, the nature of the inquiry under section 654 is intensely factual and cannot be determined in advance, particularly where, as here, there has not been a trial. "'Section 654 precludes multiple punishment for a single act or indivisible course of conduct punishable under more than one criminal statute. Whether a course of conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the "intent and objective" of the actor.' [Citation.]" (*People v. Retanan* (2007) 154 Cal.App.4th 1219, 1229.) "'The defendant's intent and objective present factual questions for the trial court . . . .' [Citation.]" (*People v. Petronella* (2013) 218 Cal.App.4th 945, 964.) The trial court usually makes these determinations after hearing all of the facts and circumstances of the case at trial. (See *People v. Ross* (1988) 201 Cal.App.3d 1232, 1240 ["[t]he factual questions that are involved in determining the applicability of the statute—for example, whether the defendant held multiple criminal objectives—will in the vast majority of cases be resolved by the sentencing judge on the basis of the evidence received during trial"].) Even where, as here, the defendant enters a guilty plea and there is no trial, the trial court has the authority to conduct an evidentiary hearing to determine whether and how to apply section 654. "[W]here the evidence produced during trial sheds insufficient light on the [section] 654 issues or where, as here, a guilty plea is entered and there is no trial," the trial court may "hold an evidentiary hearing to establish an otherwise nonexistent factual basis for a necessary sentencing decision" under section 654. (*Ross*, *supra*, at pp. 1240-1241.) As Archer concedes, "the

applicability of . . . section 654 can be somewhat tricky and is dependent on the particular facts of the case."

The applicability and operation of section 654 in the absence of a trial or evidentiary hearing is particularly problematic in this case because of the multiple incidents of criminal activity by Archer and the several instances where Archer attacked, paused, and resumed his assault on his victims. With respect to Ahmad, the testimony at the preliminary hearing was that Archer (1) beat and punched Ahmad and took his car keys; (2) dragged Ahmad to the sidewalk and hit and kicked him there; (3) left and then returned sometime later to attack Ahmad again; (4) took Ahmad's watch and cell phone and attempted to steal his rings; and (5) dragged Ahmad into the middle of the street where a car almost ran him over. With respect to Murga, the testimony was that Archer (1) assaulted Murga with a crow bar; (2) took his car keys after he fell; (3) attacked Murga a second time and attacked Skaden; and (4) took Murga's car, stealing his wallet and other personal items with it. Section 654 very well may have applied to some of the charges against Archer. But to calculate the precise effect of section 654 on Archer's sentence at the time of the entry of his plea, without the benefit of a trial or evidentiary hearing, would be speculative. The trial court's failure to give an advisory opinion on the effect of section 654 on Archer's maximum sentence, before hearing all of the evidence either at trial or an evidentiary hearing, was not clear and convincing evidence of good cause under section 1018 for Archer to withdraw his plea. (See *People v. Nocelotl* (2012) 211 Cal.App.4th 1091, 1096 [""""burden is on the defendant to present clear and convincing evidence the ends of justice would be subserved by permitting a change of plea to not guilty""""].)

Even Archer's proposed anticipatory application of section 654 is premised on speculation. For example, Archer asserts that "the five counts involving Mr. Ahmad must be broken up into two separate incidents," and had Archer "been convicted following trial any sentence on counts [1], [5], and [8] would have to be stayed." Archer states that, "To the extent that the assault (count [5]) and/or the battery (count [8]) involved the altercation immediately following [Archer] throwing Mr. Ahmad out of the

car, these counts would be 'folded into' the carjacking alleged in count [2]." Perhaps, but perhaps not. First, it is possible that Archer's crimes against Ahmad would be "broken up" into more than "two separate incidents." The preliminary hearing testimony suggests that Archer (1) used force to gain possession of Ahmad's car, (2) took Ahmad to the sidewalk and assaulted and battered him again after achieving his goal of obtaining Ahmad's car, (3) left Ahmad only to return and assault and batter him some more. Thus, depending on what the evidence would have been at trial, Archer may have had more than two intents and objectives just with respect to Ahmad. Similarly, Archer asserts with respect to Murga that he "could not be separately sentenced for the carjacking and the assault, counts [4] and [6]," because "the evidence shows that the assault on Mr. Murga was no more than the force necessary to achieve the goal of carjacking." Again, not necessarily. According to the testimony at the preliminary hearing, Archer (1) used force to obtain Murga's car keys after Murga fell in the pothole, and then, rather than driving away, (2) commenced a second attack when Skaden attempted to assist Murga. The evidence at trial could show that in engaging in this conduct, Archer had two intents and objectives: stealing Murga's car and, once he had accomplished that by force, using additional force to inflict further injury on Murga (as Archer had with Ahmad).

Nor, contrary to Archer's assertion, did the trial court's failure to perform a section 654 analysis amount to a failure to advise him of the consequences of his plea. The trial court must advise the defendant "'of the direct consequences of the conviction such as the permissible range of punishment provided by statute . . . .' [Citation.]" (*People v. Barella* (1999) 20 Cal.4th 261, 266; see *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605.) In order to properly advise Archer of the *maximum* of the statutory range of punishment, the trial court had to disregard factors, like section 654, that might (or might not) reduce Archer's sentence.

People v. Goodwillie (2007) 147 Cal.App.4th 695, cited by Archer, is distinguishable. In that case the court and the prosecutor erroneously advised the defendant in plea discussions that the maximum conduct credit the defendant could earn in prison was 15 percent, when in fact the maximum conduct credit the defendant could

earn was 50 percent. (*Id.* at pp. 731-733.) The defendant rejected the prosecutor's offer of five years, four months, went to trial, and received an aggregate sentence of 10 years. (*Id.* at pp. 706, 732.) The court held that "the court and the prosecutor had a duty not to misinform [the defendant] as to his potential eligibility for 50 percent conduct credits," and that providing the defendant with this "inaccurate information . . . caused him to reject an offer that was more favorable to him than the sentence he received after trial, and deprived him of the opportunity to reach any other plea bargain." (*Id.* at p. 733.) Unlike the conduct credit limitation in *Goodwillie*, which would have automatically and inexorably capped the defendant's credit at a certain percentage regardless of the defendant's actual conduct in prison, the effect of section 654 on a sentence is speculative and uncertain. (Cf. *People v. Barella*, *supra*, 20 Cal.4th at p. 272 ["a defendant is not entitled to withdraw or set aside a guilty plea on the ground that the trial court, in accepting the plea, failed to advise the defendant of a limit on good-time or work-time credits available to the defendant"]; *People v. Zaidi* (2007) 147 Cal.App.4th 1470, 1486 ["good time/work time credits and eligibility for parole . . . depend on unknowable events that occur after the defendant's incarceration" and "possible early release is speculative when the plea is taken and depends on facts that have not yet occurred"].)

Finally, even if the trial court had misadvised Archer, Archer would not be entitled to withdraw his plea of guilty because he did not make a sufficient showing of prejudice. A defendant, on direct appeal or habeas, "is entitled to relief based upon a trial court's misadvisement only if the defendant establishes that he or she was prejudiced by the misadvisement, i.e., that the defendant would not have entered the plea of guilty had the trial court given a proper advisement." (*In re Moser*, *supra*, 6 Cal.4th at p. 352; see *People v. Breslin*, *supra*, 205 Cal.App.4th at p. 1416 ["[t]he defendant must also show prejudice in that he or she would not have accepted the plea bargain had it not been for the mistake"].) Nowhere in his declaration in support of his motion to change his plea did Archer ever state that he would not have accepted the plea bargain had it not been for the claimed mistake. Archer stated in his declaration that he "pleaded guilty under duress and ignorance, . . . to 27 years 4 months . . . on threat from counsel that [he] would never

get out unless [he] took this time," but he did not state that, had the court advised him of the possible effects of section 654, he would not have accepted the deal and would have insisted on going to trial. (See *In re J.V.* (2010) 181 Cal.App.4th 909, 914 [the "bare assertion of prejudice is not enough"]; cf. *People v. Zaidi*, *supra*, 147 Cal.App.4th at pp. 1488-1489 [defendant made more than "a naked assertion" of prejudice when he "supported his petition with a declaration that . . . [h]ad he known [registration as a sex offender] was a lifetime requirement, he would never have entered his plea and would have insisted on going to trial"].)

Archer cites *In re Carabes* (1983) 144 Cal.App.3d 927. In that case the court found that the defendant had met his burden of showing prejudice because "[p]romptly after becoming aware of the parole consequence, [he] sought to withdraw his plea on the ground he was not aware of this consequence," from which "[t]he clear inference" was that "had he been aware of the parole consequence, he would not have pled guilty." (*Id.* at p. 933.) Although there is no evidence of when Archer learned about the section 654 issue, the record suggests that he did not move "promptly." In addition, in this case the trial court accepted Archer's plea on November 1, 2012, and Archer did not indicate that he wanted to withdraw his plea until February 19, 2013, after the court had allowed him to continue in several educational programs. Although we do not address the People's argument that Archer is estopped from challenging the validity of his plea because he "accepted a benefit of the bargain," the fact that, as the People argue, Archer "was allowed to avoid the imposition of his sentence" to participate in the education programs further distinguishes *Carabes*.

C. *Archer Did Not Receive Ineffective Assistance of Counsel*

Archer argues that the attorney representing him at the time he entered his guilty plea "did not offer competent advice on the law with respect to the maximum sentence [Archer] faced if convicted at trial; in fact, the record shows that it was [Archer] himself who figured out that . . . section 654 would prohibit the court from running sentences on all counts consecutively if [Archer] went to trial and were convicted as charged." Archer

complains that his attorney "was silent in the face of a misrepresentation of the maximum term by the trial court."

Archer is correct that he is entitled to effective assistance of counsel in determining whether to accept or reject a plea bargain. (See *Lafler v. Cooper* (2012) ___ U.S. ___, ___ [132 S.Ct. 1376, 1387, 182 L.Ed.2d 398]; *In re Alvernaz* (1992) 2 Cal.4th 924, 933; *In re Vargas* (2000) 83 Cal.App.4th 1125, 1133.) Archer, however, was not denied effective assistance of counsel. As noted, the trial court did not misrepresent the maximum term Archer faced if convicted, so counsel for Archer was not ineffective for being silent in court in the face of a statement that was not a misrepresentation. Moreover, there is no evidence that Archer received incorrect advice that caused him to accept the plea deal. (See *In re Alvernaz*, *supra*, at p. 934 ["in order successfully to challenge a guilty plea on the ground of ineffective assistance of counsel, a defendant must establish not only incompetent performance by counsel, but also a reasonable probability that, but for counsel's incompetence, the defendant would not have pleaded guilty and would have insisted on proceeding to trial"]; cf. *People v. Carter* (2003) 30 Cal.4th 1166, 1211 ["[i]f the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation"].) Archer stated only that his trial counsel failed to advise him about section 654 "prior to plea of guilty."

DISPOSITION

The order is affirmed.

SEGAL, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX G

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VAUGHN S ARCHER, Petitioner-Appellant, v. DANIEL PARAMO, Warden, Respondent-Appellee.	No. 16-56464 D.C. No. 2:16-cv-00445-JLS-AS Central District of California, Los Angeles ORDER

Before: Peter L. Shaw, Appellate Commissioner.

The motion to proceed in forma pauperis (Docket Entry No. 5) is granted. The Clerk shall amend the docket to reflect this status.

Appellant's motion for appointment of counsel in this appeal from the denial of a 28 U.S.C. § 2254 petition for writ of habeas corpus (Docket Entry No. 5) is granted. *See* 18 U.S.C. § 3006A(a)(2)(B); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Counsel will be appointed by separate order.

The Clerk shall electronically serve this order on the appointing authority for the Central District of California, who will locate appointed counsel. The appointing authority shall send notification of the name, address, and telephone number of appointed counsel to the Clerk of this court at counselappointments@ca9.uscourts.gov within 14 days of locating counsel.

ELF/MOATT

The opening brief and excerpts of record are due October 11, 2017; the answering brief is due November 10, 2017; and the optional reply brief is due within 21 days after service of the answering brief.

APPENDIX H

233

FELONY ABSTRACT OF JUDGMENT—DETERMINATE

(NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED)

CR-290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: VAUGHEN ARCHER
DOB: 09/24/1968
AKA: Sammie Archer, Vaughn Brown, Vaughn Archor
CII NO.: A08743543
BOOKING NO.: 2927162 ☐ NOT PRESENT

BA390420-01 -A
-B
-C
-D

FILED
LOS ANGELES SUPERIOR COURT
AUG 05 2013
JOHN A CLARKE, EXECUTIVE OFFICER/CLERK
BY Connie Rodriguez Deputy

FELONY ABSTRACT OF JUDGMENT ☑ PRISON COMMITMENT ☐ COUNTY JAIL COMMITMENT ☐ AMENDED ABSTRACT

DATE OF HEARING	DEPT. NO.	JUDGE
08/02/2013	130	C.H. REHM JR.
CLERK: EMILY LOPEZ	REPORTER: ROSEMARY H. ARTEAGA	PROBATION NO. OR PROBATION OFFICER: X-296911 ☐ IMMEDIATE SENTENCING
COUNSEL FOR PEOPLE: GREGORY J DENTON		COUNSEL FOR DEFENDANT: IN PRO PER ☐ APPOINTED

1. Defendant was convicted of the commission of the following felonies:
☐ Additional counts are listed on attachment
_____ (number of pages attached)

COUNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YR.)	CONVICTED BY: JURY	COURT	PLEA	TERM (L, M, U)	CONCURRENT	1/3 CONSECUTIVE	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (REFER TO Item 5)	654 STAY	SERIOUS FELONY	VIOLENT FELONY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED: YRS.	MOS.
01	PC	211**	SECOND DEGREE	2011	11/01/12			X	M		X						1	0
			ROBBERY		/ /													
02	PC	215(A)	CARJACKING	2011	11/01/12			X	M		X						1	8
03	PC	211**	SECOND DEGREE	2011	11/01/12			X	M		X						1	0
			ROBBERY		/ /													
04	PC	215(A)	CARJACKING	2011	11/01/12			X	U								9	0

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

COUNT	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL	
01	12022.7(A) PC	1					1	0
02	12022.7(A) PC	1					1	0
03	12022(B)(2) PC	8						8
04	12022(B)(2) PC	3					3	0

3. ENHANCEMENTS charged and found to be true for PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL	
667.5(B) PC	1	667.5(B) PC	1	667.5(B) PC	1	3	0
667.5(B) PC	1					1	0

4. Defendant sentenced ☐ to county jail per 1170(h)(1) or (2)
☐ to prison per 1170(a), 1170.1(a) or 1170(h)(3) due to ☐ current or prior serious or violent felony ☐ PC 290 or ☐ PC 186.11 enhancement
☐ per PC 667(b)-(i) or PC 1170.12 (strike prior)
☐ per PC 1170(a)(3). Preconfinement credits equal or exceed time imposed. ☐ Defendant ordered to report to local parole or probation office.

5. INCOMPLETE SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6. TOTAL TIME ON ATTACHED PAGES: 5 0
7. ☐ Additional indeterminate term (see CR-292).
8. TOTAL TIME: 27 4

Attachments may be used but must be referred to in this document.

Form Adopted for Mandatory Use
Judicial Council of California
CR-290 [Rev. July 1, 2012]

FELONY ABSTRACT OF JUDGMENT—DETERMINATE

Penal Code, § 1213, 1213.5

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FELONY ABSTRACT OF JUDGMENT
ATTACHMENT PAGE

CR-290(A)

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: VAUGHN ARCHER

BA390420-01 -A | -B | -C | -D

1. Defendant was convicted of the commission of the following felonies:
This attachment page number: 1A

COUNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY: JURY	COURT	PLEA	TERM (L, M, U)	CONCURRENT	1/3 CONSECUTIVE	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (refer to item 5)	654 STAY	SERIOUS FELONY	VIOLENT FELONY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED: YRS.	MOS.
05	PC	245(A)(1)	ASSAULT BY MEANS	2011	08/02/13			X	M		X						1	0
			LIKELY TO PRODUCE		/ /													
			GREAT BODILY INJUR		/ /													
06	PC	245(A)(1)	ASSAULT WITH A	2011	08/02/13			X	M		X						1	0
			DEADLY WEAPON		/ /													
07	PC	245(A)(1)	ASSAULT WITH A	2011	08/02/13			X	M		X						1	0
			DEADLY WEAPON		/ /													
					/ /													
					/ /													
					/ /													
					/ /													
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					/ /													
					/ /													
					/ /													
TOTAL																		

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

COUNT	ENHANCEMENT	TIME IMPOSED, "S," OR "PS"	ENHANCEMENT	TIME IMPOSED, "S," OR "PS"	ENHANCEMENT	TIME IMPOSED, "S," OR "PS"	TOTAL	
05	12022.7(A) PC	1					1	0
07	12022.7(A) PC	1					1	0
TOTAL								

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL	

4. TOTAL TIME IMPOSED ON THIS ATTACHMENT PAGE: 5 | 0

Form Adopted for Mandatory Use
Judicial Council of California
CR-290(A) [Rev. July 1, 2012]

FELONY ABSTRACT OF JUDGMENT
ATTACHMENT PAGE

Penal Code, §1213.5

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CR-290

PEOPLE OF THE STATE OF CALIFORNIA vs.
DEFENDANT: VAUGHEN ARCHER

BA390420-01 -A	-B	-C	-D

9. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

a. **Restitution Fines:**

Case A: $ 240 per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); $ 240 per PC 1202.45 suspended unless parole is revoked.
$ _____ per PC 1202.44 is now due, probation having been revoked.

Case B: $ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); $ _____ per PC 1202.45 suspended unless parole is revoked.
$ _____ per PC 1202.44 is now due, probation having been revoked.

Case C: $ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); $ _____ per PC 1202.45 suspended unless parole is revoked.
$ _____ per PC 1202.44 is now due, probation having been revoked.

Case D: $ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); $ _____ per PC 1202.45 suspended unless parole is revoked.
$ _____ per PC 1202.44 is now due, probation having been revoked.

b. **Restitution per PC 1202.4(f):**

Case A: $ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
Case B: $ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
Case C: $ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
Case D: $ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

☐ *Victim name(s), if known, and amount breakdown in item 13, below. ☐ *Victim name(s) in probation officer's report.

c. **Fines:**

Case A: $ _____ per PC 1202.5 $ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ $ ____ Lab Fee per HS 11372.5(a) ☐ $ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case B: $ _____ per PC 1202.5 $ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ $ ____ Lab Fee per HS 11372.5(a) ☐ $ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case C: $ _____ per PC 1202.5 $ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ $ ____ Lab Fee per HS 11372.5(a) ☐ $ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case D: $ _____ per PC 1202.5 $ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ $ ____ Lab Fee per HS 11372.5(a) ☐ $ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

d. **Court Operations Assessment:** $ 280 per PC 1465.8. e. **Conviction Assessment:** $ 210 per GC 70373. f. **Other:** $ ____ per *(specify)*: _____

10. TESTING: ☐ Compliance with PC 298 verified ☐ AIDS per PC 1202.1 ☐ other *(specify)*:

11. REGISTRATION REQUIREMENT: ☐ per *(specify code section)*: _____

12. ☐ MANDATORY SUPERVISION: Execution of a portion of the defendant's sentence is suspended and deemed a period of mandatory supervision under Penal Code section 1170(h)(5)(B) as follows *(specify total sentence, portion suspended, and amount to be served forthwith)*:
Total: _____ Suspended: _____ Served forthwith: _____

13. Other orders *(specify)*: Not own, use or possess any dangerous or deadly weapons, including any firearms, knives or other concealable weapons.

The Defendant is to pay a $20.00 DNA Assessment pursuant to Government Code Section 76104.7.

14. IMMEDIATE SENTENCING: ☐ Probation to prepare and submit a post-sentence report to CDCR per 1203c.
Defendant's race/national origin: BLACK

15. EXECUTION OF SENTENCING IMPOSED
a. ☑ at initial sentencing hearing
b. ☐ at resentencing per decision on appeal
c. ☐ after revocation of probation
d. ☐ at resentencing per recall of commitment (PC 1170(d).)
e. ☐ other *(specify)*:

16. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT	
A	743	646	97	[ ] 2933 [ ] 2933.1 [ ] 4019
B				[ ] 2933 [ ] 2933.1 [ ] 4019
C				[ ] 2933 [ ] 2933.1 [ ] 4019
D				[ ] 2933 [ ] 2933.1 [ ] 4019

Date Sentence Pronounced	Time Served in State Institution
08 02 2013	DMH [ ] CDC [ ] CRC [ ]

17. The defendant is remanded to the custody of the sheriff ☑ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
To be delivered to ☑ the reception center designated by the director of the California Department of Corrections and Rehabilitation
☐ county jail ☐ other *(specify)*:

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE	DATE
	AUGUST 05, 2013

APPENDIX I

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA.	
PLAINTIFF-RESPONDENT,	
VS.	NO. BA390420-01
VAUGHN ARCHER-01,	2D CRIM NO. B250502
DEFENDANT-APPELLANT.	AUGMENTATION

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE WILLIAM C. RYAN, JUDGE PRESIDING
PURSUANT TO NOTICE DATED NOVEMBER 26, 2013
REPORTER'S TRANSCRIPT ON APPEAL
NOVEMBER 1, 2012

APPEARANCES:

FOR THE PLAINTIFF-RESPONDENT:	KAMALA HARRIS STATE ATTORNEY GENERAL 300 SOUTH SPRING STREET NORTH TOWER, SUITE 1701 LOS ANGELES, CALIFORNIA 90013
FOR DEFENDANT-APPELLANT:	IN PROPRIA PERSONA

VOLUME 1 OF 1 VOLUMES

PAGES F-1 THROUGH F-29

RONALD KIM, CSR #12299
OFFICIAL REPORTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT CENTRAL 130 HON. WILLIAM C. RYAN, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,)
PLAINTIFF,)
VS.) NO. BA390420-01
VAUGHN ARCHER-01,)
DEFENDANT.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

NOVEMBER 1, 2012

APPEARANCES:

FOR THE PEOPLE: STEVE COOLEY
DISTRICT ATTORNEY
BY: GREG DENTON
DEPUTY DISTRICT ATTORNEY
18000 FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET, 18TH FLOOR
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT: RONALD L. BROWN
PUBLIC DEFENDER
BY: MARCUS HUNTLEY
DEPUTY PUBLIC DEFENDER
19-513 FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

RONALD H. KIM, CSR #12299
OFFICIAL REPORTER

INDEX FOR NOVEMBER 1, 2012

VOLUME 1 OF 1

M A S T E R I N D E X

CHRONOLOGICAL AND ALPHABETICAL INDEX OF WITNESSES

(NONE)

EXHIBITS

(NONE)

CASE NUMBER: BA390420-01
CASE NAME: PEOPLE VS VAUGHN ARCHER
LANCASTER, CA. THURSDAY, NOVEMBER 1, 2012
DEPARTMENT C-130 HON. WILLIAM C. RYAN, JUDGE
REPORTER: RONALD KIM, CSR NO. 12299
TIME: P.M. SESSION

APPEARANCES: THE DEFENDANT BEING PRESENT IN COURT WITH COUNSEL, MARCUS HUNTLEY, DEPUTY PUBLIC DEFENDER; GREGORY DENTON, DEPUTY DISTRICT ATTORNEY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(The following proceedings were held in open court:)

THE COURT: We're in session on People versus Vaughn Archer, BA390420. Let's start with appearances.

MR. HUNTLEY: Good afternoon. Deputy public defender Marcus Huntley for Mr. Archer, present in court in custody.

MR. DENTON: Greg Denton for the People.

THE COURT: Okay. What are we doing?

MR. HUNTLEY: Your Honor, Mr. Archer wanted to address the Court. I informed Mr. Archer of the offer. I thought the offer was going to be around 24 years. The district attorney told me they're willing to offer 27 years, 4 months. I hadn't told Mr. Archer that because I heard that right before lunch. Mr. Archer informed me

earlier he would be willing to accept an offer of 16 years.

THE COURT: Okay. Then I think we're going to trial.

THE DEFENDANT: I'm saying one --

THE COURT: It's not "Let's Make a Deal." Their offer is 27 years, 4 months, which is what you're facing on everything other than the kidnapping. For kidnapping, you're facing life in prison. If you're convicted on everything, then the sentence you're facing is 34 years, 4 months to life.

That's what you're facing, and I can't speak for what the Board of Prison Terms or whatever that body is called 34 years hence, but I'm guessing that, if the People prove up what is in the probation report, you're not going to be getting out at 34 years, 4 months.

THE DEFENDANT: That's a lot of time for a person that does not have no strikes or no prior violence.

THE COURT: You've got multiple victims and multiple offenses and great bodily injury alleged, and one of the offenses is a life-top term. That's by statute. Yeah. I agree. It's a lot of time. It's easy for us to say. We don't have to do the time.

THE DEFENDANT: Yeah.

THE COURT: But on the other hand, you have to face the fact that, if you're convicted, you're looking at 34 years, 4 months to life. Basically, you're going to die in prison. The People's offer would be to allow

you to have a life after you do your time. So this is 85 percent?

MR. DENTON: Right.

THE COURT: You'd have to do 23 years and -- 23 and a fraction years before you would be paroled. If you're convicted on everything, there's no guarantee you would ever be paroled.

THE DEFENDANT: Yeah. I understand that. I understand that.

THE COURT: Do you want a couple of more minutes to talk to your client?

MR. HUNTLEY: Yes, Your Honor.

THE DEFENDANT: That's a lot of time, Your Honor.

THE COURT: Lot of crimes.

THE DEFENDANT: Yeah but --

THE COURT: It's a lot of crimes. You want more time or not?

MR. HUNTLEY: Just a little.

THE COURT: I mean, I'll get off the bench and let you talk to him in the back. You want to do that?

MR. HUNTLEY: Yes, Your Honor.

THE DEFENDANT: Please.

THE COURT: Second call.

(A pause in the proceedings.)

THE COURT: I can't get to a number less than 27, 4 on an open plea. Okay?

MR. HUNTLEY: I know.

THE COURT: I can't get anything less.

(A pause in the proceedings.)

THE COURT: We're in session again on People versus Vaughn Archer, BA390420.

Where are we now?

MR. HUNTLEY: I spoke to Mr. Archer and informed Mr. Archer that the Court stated that, so long as he's progressing in the program, the Court would probably sentence him (unintelligible). Mr. Archer has told me that he wants to accept the Court's -- the People's offer.

THE COURT: With the Court's indicated that I'll put over sentencing so long as he's progressing. He's in the Merit program; right?

MR. HUNTLEY: Yes, sir.

THE DEFENDANT: Merit, and I'm getting my --

THE COURT: G.E.D.?

THE DEFENDANT: Yes, sir.

THE COURT: You should be able to get that in a year.

THE DEFENDANT: Yeah. That's what I just -- I just have to postpone it a year, and I can come back and stuff like that. I just want to finish, and, you know, this is a long time for me to leave, you know --

THE COURT: I understand that.

THE DEFENDANT: -- my support group and stuff like that. I just want you to -- you know what I mean?

THE COURT: Okay. Well, first of all, let's deal with the People's second amended Information, in which Mr. Denton cleaned up the Information, and then we went through it, and then there were a number of things in chambers that we struck; right? So we determined, first of all, Mr. Denton, that the defendant does not have a strike prior; correct?

THE DEFENDANT: Correct.

THE COURT: So all of the allegations on Page 6 are -- the People move to dismiss them?

MR. DENTON: So moved.

THE COURT: Those are dismissed pursuant to Penal Code section 1385. That's all of the -- the three allegations that I've struck out by hand on the Information.

MR. DENTON: That's Page 8; correct, Your Honor? You said 6.

THE COURT: If I said 6, I meant 8.

MR. DENTON: Okay. First of all, People filed a second amended Information, and Defendant waives further arraignment; correct?

MR. HUNTLEY: Yes, Your Honor.

THE COURT: Okay. And, now, we're going to strike those so that he doesn't have all of those pending, and the calculation I had -- I made as to his maximum time was on -- assuming those are stricken. Now --

MR. DENTON: May I approach, Your Honor?

THE COURT: Yes.

MR. DENTON: I borrowed your --

THE COURT: Have you copied --

MR. DENTON: I did.

THE COURT: The next thing is going through the summary on the second and third page, because he doesn't have strike priors. The 666(a) allegation goes out; correct, Mr. Denton?

MR. DENTON: Correct, Your Honor.

THE COURT: And is that -- he had that -- that was also on Page 8.

MR. DENTON: Yes.

THE COURT: And I'm of the view you do not have to allege 1170(H)(3). It's required by law, but I know your office prefers to do that, but that's out.

Okay. So when we take that out, we're left with -- and I went through and calculated this, that he would be pleading to Counts 1 through 8; correct?

MR. DENTON: Correct.

THE COURT: And then he would be admitting the 667.5's; right?

MR. DENTON: Correct.

THE COURT: And that would be -- the sentence --

MR. DENTON: Yes. That's correct.

THE COURT: And he would also be -- admitting the -- let me see. Counts 4 was the most serious, and he would be admitting the 12022(b)(2).

MR. DENTON: Correct.

THE COURT: And then he would receive -- the total sentence would be 27 years, 4 months, calculated at nine plus three as to Count 4, and then the remaining counts, which would be 1, 2, 3, 5, 6, 7 -- no, no. I have 3 to 8 -- right? -- because the 654, and he wanted to plead to --

MR. DENTON: That -- no. That's not necessary. That's the 654 --

THE COURT: He's going to plead to 1 through 7, and it would be calculated -- as I've said, Count 4 would be the base term of nine plus three, and then Count 1 would be two years, one plus one.

Count 2 would be two years, eight months -- one year, eight months plus one. Count 3 would be one years, eight months. Count 5 would be two years, which I believe was one plus one; correct? It is.

MR. DENTON: Count 5 is one plus one.

THE COURT: 12022.7.

MR. DENTON: Right.

THE COURT: Count 6 is one. There is -- which is one-third the mid-term.

MR. DENTON: Correct.

THE COURT: And Count 7 is two, which is one plus one.

MR. DENTON: Correct.

THE COURT: And that totals 23 years and 4 months and then 4 years for the 667.5's; correct?

MR. DENTON: Right.

THE COURT: Correct?

MR. HUNTLEY: That's what I understand.

THE COURT: Okay. All right.

(Counsel and client conferred sotto voce.)

THE COURT: Are you ready to go, Mr. Huntley?

MR. HUNTLEY: Yes, Your Honor. I'm just going over the four prison priors.

THE COURT: All right. That's fair.

MR. HUNTLEY: The last one --

THE COURT: That's fair. Make sure that none have washed out.

MR. HUNTLEY: Your Honor, it looks like for the four prison priors, it looks like in the 2002 prison prior, BA211 --

THE COURT: Well, you know, it's -- 12-29-97, five years is 12-29-2002.

MR. HUNTLEY: I'm talking about the next one. From 2002 to 2011, he got out in '05.

THE COURT: The 2002 conviction, how long was he in custody for?

MR. HUNTLEY: He got out in 2005. He got out of prison in --

THE DEFENDANT: That was.

THE COURT: Was he on parole afterwards?

THE DEFENDANT: That was a sales case.

THE COURT: Because if it's from when he's out of custody including a period of parole; right? That's how it works. How long did his parole take?

MR. HUNTLEY: Three years.

THE DEFENDANT: Parole is three years for everyone.

THE COURT: Okay. Well, then he wasn't free from custody for five years, and the 2011 conviction is properly alleged because parole counts.

(Counsel and client conferred sotto voce.)

THE COURT: Mr. Denton, have I stated it correctly?

MR. DENTON: Yeah. Well --

THE COURT: It includes a period of parole; right?

MR. DENTON: No. That's not correct, Your Honor. He has to actually be in prison.

THE COURT: Okay. So, well, then he's right about the 2011, is he not?

MR. DENTON: Well, that's a very technical thing because I've got to go back and look at the C.D.C. records to see if -- because if he went back in on a parole violation, even if it was not on a charged case, if he went back in on a parole violation, that basically wipes out everything ahead of it.

THE COURT: That's picked up in his CCHRS -- it has to be picked up on his C.I.I. -- correct? Do you

have his C.I.I. rap sheet? Because they report (unintelligible) sentence.

(A pause in the proceedings.)

THE COURT: Why don't you two take a couple of minutes and sort that out.

MR. HUNTLEY: Okay.

THE COURT: Although, you know, Mr. Huntley, Mr. Denton can make a good argument that, you know, this is the offer.

MR. HUNTLEY: The problem is you can't get to a -- you can't do that -- a legal sentence.

THE COURT: If he agrees to it, you can.

MR. HUNTLEY: I don't think my client's going to agree to it.

THE COURT: Yeah, he can. Yeah, he can. There's case law right on point.

MR. DENTON: I can tell -- Mr. Huntley, do you have his C.I.I.?

THE COURT: Do you want me to --

MR. DENTON: I think it's pretty -- we can do this pretty quickly to tell you the truth.

MR. HUNTLEY: Yes, I do.

MR. DENTON: They're on his C.I.I. If you look down -- go to the bottom of the page on one change where it says "Correctional Department Delano" in 2002 on February 19, 2002. That would be the time that he was

taken into state prison on that case that we're talking about.

MR. HUNTLEY: Right, Your Honor.

MR. DENTON: So he gets eight years on that case.

MR. HUNTLEY: Correct.

THE COURT: That would be 2010. If we did it at half time, that would be four.

MR. DENTON: So that would be --

THE COURT: 2006.

MR. DENTON: But you can see in 2006, he got -- he was out in 2006, and he got picked up on a violation of parole. So that's in 2006. He went back to Tracy in 2006 on a violation of parole.

THE COURT: What date?

MR. DENTON: In June 19, 2006, he was returned to Tracy on a violation of parole.

THE COURT: Well, that then -- the 2011 was in five years of being returned to custody to --

MR. DENTON: And then to make matters worse, he went back to Tracy again in October of 2007 on another violation of parole.

(A pause in the proceedings.)

MR. HUNTLEY: Okay.

THE COURT: Okay? Satisfied, Mr. Huntley?

MR. DENTON: And then he went to Lancaster in 2008 on another violation of parole. So there's no way

that --

THE COURT: I think, Mr. Vaughn is -- Mr. Archer is satisfied. He just wanted to be sure we had the dates correct; right?

THE DEFENDANT: Oh, yes.

THE COURT: Okay.

THE DEFENDANT: I've got one more question.

THE COURT: Satisfied, Mr. Archer?

THE DEFENDANT: Yes. I've got one more question for you. Now, I come back to court November of 2013.

THE COURT: Or sooner if you're done sooner.

(Counsel and client conferred sotto voce.)

THE COURT: I'm going to set 90-day dates and see how you're doing.

(Counsel and client conferred sotto voce.)

THE COURT: Yeah, up to a year. If you do it sooner, then we're done.

THE DEFENDANT: Your Honor, I don't even want to come to court. You know what I mean? I just --

THE COURT: I've got to monitor it. I can't just do it for a year. I'll get -- the presiding judge will call me and say what are you doing? I have my boss too to deal with. Okay? I'll see you every 90 days. I'm not willing to do it any less. You still want to take

the offer?

(Counsel and client conferred sotto voce.)

THE DEFENDANT: I really don't have a choice.

THE COURT: Well, you do. I don't want you to feel you don't have a choice, but I'm explaining to you why I have to do it every 90 days. I won't do it any sooner than that. I'm not going to drag you to court every two weeks, but I've got to have you come back at some reasonable period. Okay?

THE DEFENDANT: I just want to understand what you want me to --

THE COURT: I'm trying to be reasonable.

THE DEFENDANT: I'm just saying, when I come back in 90 days --

THE COURT: You're going to report to me how you're doing, and maybe we're going to check with the sheriff to confirm it. If everything you're doing well, then I'll put it over another 90 days up to one year.

THE DEFENDANT: Okay.

THE COURT: Okay? Fair enough?

THE DEFENDANT: If I need more time, you think I can get it?

THE COURT: Well, let's see how you're -- you know, if you're at a year and you need two more weeks, you're going to get the two weeks.

THE DEFENDANT: Good.

THE COURT: If you're at a year and you need two more years, you're not getting the two years.

THE DEFENDANT: Oh, I understand that.

THE COURT: Okay? I can work with you. Okay?

THE DEFENDANT: Yeah.

THE COURT: Okay.

THE DEFENDANT: Yes.

THE COURT: Mr. Denton, you're up.

MR. DENTON: Thank you.

Q Vaughn Archer, is that your true name, sir?

A Yes.

Q And is your birthdate September 24, 1968?

A Yes.

Q Mr. Archer, you've been here in court. You've heard us discuss the proposed disposition in this case. Do you understand the disposition?

A Yes.

Q And do you wish to go forward on the basis that we've been talking about?

A Yes.

Q Have you had enough time to talk to your lawyer about your case?

A Yes.

Q Have you told him everything you know about your case?

A Have I told --

Q Have you told your attorney everything you know about your case?

A No.
Q Okay. Do you want to tell him something else about your case that he doesn't know about?
A No, no, no, no.
Q So you're satisfied that he knows everything that you want him to know?
A Yes.
Q Okay. Now, before the judge will accept your pleas to these charges, Mr. Archer, that we've been talking about, you need to understand the consequences of doing so. We've already told you what the sentence is going to be in this case, which is going to be 27 years and 4 months.
You're pleading to several strikes in this case, which means that, when you get out of prison, you're going to have lots of strikes on your record. If you commit another crime and are charged with another felony, the next case could have an immense sentence. It could be 25 to life for any count because you're going to have at least two strikes on your record. Do you understand that?
A Yes.
Q Okay. If you're pleading no contest to any of these charges, you need to understand that at this court and for all criminal purposes, that is exactly the same as a plea of guilty. When you get out of prison, you're going to be on parole for a period of three years.
If you violate any parole conditions during

that time, you could be returned to state prison for one year for each violation.

There's going to be a restitution fine imposed here in the amount of $240 per count as well as a $40.00 --

THE COURT: No, no, per case.

MR. DENTON: Per case?

THE COURT: Yeah, but the court security fee and criminal conviction fee are per count.

Q **(By Mr. Denton)** $40.00 court security fee and a $30.00 criminal conviction assessment per count. You're going to have to pay restitution for any losses or damages suffered by the victims in this particular case.

Because these are felony offenses, you're going to have to provide samples of your D.N.A. and fingerprints and pay a D.N.A. penalty assessment. You will be eligible for good time and work time credits in state prison for up to 15 percent of the time that you're being imprisoned.

Do you understand all these consequences I've told you about, Mr. Archer?

A Yes.

Q Do you have any questions about them?

A No.

Q Do you have any questions you want to ask the judge or myself or your attorney about what -- anything else that is on your mind about what's going on with this case?

A Yes.

Q What that?

A Okay. With the amended paper that my attorney had --

Q Uh-huh.

A -- I never knew about that.

Q Okay.

THE COURT: It was just filed today.

THE DEFENDANT: No. The judge in our last court room, the district attorney gave them to my attorney.

THE COURT: No, no. That was a different one. He filed a new one today. It deleted the strike allegation.

THE DEFENDANT: Okay. So how come he didn't tell me that?

THE COURT: I don't know.

THE DEFENDANT: See --

THE COURT: It was handed to me in chambers five minutes ago. Not five minutes ago, maybe an hour ago, two hours ago.

Anything else?

THE DEFENDANT: I think -- I just don't feel right with this yet.

THE COURT: Okay.

THE DEFENDANT: Excuse me.

THE COURT: Then I guess we're not doing this. I guess we're going to trial.

THE DEFENDANT: I just don't -- I just don't -- I just don't --

THE COURT: What's the problem here?

THE DEFENDANT: Huh?

THE COURT: What's the problem?

THE DEFENDANT: I'm in the dark.

THE COURT: What are you in the dark on?

THE DEFENDANT: This is what I'm in the dark about.

THE COURT: The charges have not changed.

THE DEFENDANT: The charges -- could I just -- could I just say what I need to say?

THE COURT: Yes.

THE DEFENDANT: All right. Now, I feel that, if I don't take this deal, then I'm going to get life. So I feel like I have no choice but to take this case.

THE COURT: If you're convicted of all counts, you're facing 34 years, 4 months to life. That's correct.

THE DEFENDANT: Yeah, and I feel like I'm pressured into this.

THE COURT: Okay.

THE DEFENDANT: You know, look it. I had -- I had -- I had an attorney prior to this one.

THE COURT: Mr. Walker -- or Mr. Archer, today is the day for trial.

THE DEFENDANT: Can I just say what I need to say?

THE COURT: Yeah, but the problem is is that you apparently don't want to go to trial and don't want to take the deal. You have to do one or the other today.

THE DEFENDANT: Okay. All right. But you asked me do I have any questions or have any concerns --

THE COURT: Okay.

THE DEFENDANT: -- and I'm just expressing my concerns.

THE COURT: Well, I can't help that. Today's the date for trial.

THE DEFENDANT: I understand that.

THE COURT: Either you go to trial and whatever happens at trial is whatever happens, or you can take an offer where you'll have some certainty as to what your future is. Nobody's pressuring you. If you don't want to take this deal, you don't have to.

THE DEFENDANT: I'm just saying I can't go to trial with my attorney right here. He's been my attorney for two months. My other attorney was here for ten months. What am I going to do? I'm forced to go take this deal. I don't have nothing else --

THE COURT: Are you ready, Mr. Huntley?

MR. HUNTLEY: Yes, Your Honor.

THE DEFENDANT: No.

THE COURT: Okay. He's ready to go to trial, except he's not available on the 9th, and I'm not available on the 8th and 9th. So we'll just be dark those days. So --

THE DEFENDANT: I just had to say what I had to say.

THE COURT: Do you want to take the --

THE DEFENDANT: I have no choice. Yes. I want to take the --

THE COURT: Yes. You have a choice. If you say that once more, you're going to trial. Okay? Don't -- I'm not going to let you make a false record.

THE DEFENDANT: I'm not making a false record.

THE COURT: You are making a false record when you say you don't have a --

THE DEFENDANT: No.

THE COURT: Okay. I'm taking a recess. Put him in the lockup.

(A short break was taken.)

THE COURT: We're back on the record in People versus Vaughn Archer, BA390420.

MR. HUNTLEY: Thank you, Your Honor.

Mr. Archer has informed me that he would like to continue with the plea.

THE COURT: Okay. Then, Mr. Denton, why don't you continue.

MR. DENTON: Thank you.

Q Mr. Archer, has anyone used any force or threats on you or anyone close to you to make you enter these pleas?

A No, sir.

Q Anyone made you any promises about what will happen to you or what will happen with this case

that we have not talked about in court?

A No, sir.

MR. DENTON: Counsel, do you stipulate there's a factual basis for these pleas contained in the police report?

MR. HUNTLEY: And the preliminary hearing transcript, yes.

MR. DENTON: And do you join in the waivers about to be taken and concur in the pleas about to be taken?

MR. HUNTLEY: Yes, pursuant to "People v. West."

Q **(By Mr. Denton)** Mr. Archer, before the judge will accept your pleas, you must understand and give up your constitutional rights. You have a right to a speedy and public jury trial. Do you know what that means?

A Yes.

Q And do you give up that right so that you can enter these pleas?

A Yes.

Q At any trial you have the right to confront cross-examine the witnesses against you. You have the right against self-incrimination at all times, and you have the right to present a defense, which includes the free subpoena power of the court.

Do you understand each of those rights?

A Yes.

Q Do you give up each of those rights so that you can enter these pleas?

A Yes.

MR. DENTON: Does the Court wish to inquire any further?

THE COURT: No. You may take the plea.

Q (By Mr. Denton) Mr. Archer, I'm going to go in order that we have talked about as far as the disposition goes. So for Count 4 of the Information, which charges you with the felony crime of carjacking in violation of Penal Code section 215(a), which is a serious and violent felony within the meaning of the three strikes law, how do you now plead to that charge?

A No contest.

Q And to the allegation made pursuant to Penal Code section 12022(b)(2), which alleges that you -- one second please.

Which alleges you personally used a dangerous and deadly weapon, which was a tire iron in the commission of that crime, which makes it a serious felony, do you admit or deny that allegation?

A Admit.

Q As to Count 1 of the Information, which charges you with the felony crime of second degree robbery, in violation of Penal Code section 211, which is a serious and violent felony within the meaning of the three strikes law, how do you now plead to that charge.

A No contest.

Q To the allegation made pursuant to Penal Code section 12022.7(a), which alleges that you personally inflicted great bodily injury upon the victim

in that case, whose name is Hagi, H-a-g-i; Ahmad, A-h-m-a-d, which causes that crime to be a serious felony, do you admit or deny that allegation?

A Admit.

Q As to Count 2 of the Information, Mr. Archer, which charges you with the felony crime of carjacking, in violation of Penal Code section 215, which is a serious and violent felony, within the meaning of the three strikes law, how do you now plead to that charge?

A No contest.

Q And to the allegation that you personally inflicted great bodily injury, pursuant to Penal Code section 1022.7(a), upon the alleged victim there, Hagi Ahmad, do you admit or deny that special allegation?

A Admit.

Q As to Count 3 of the Information, which charges you with the felony crime of second degree robbery, in violation of Penal Code section 211, which is a serious and violent felony within the meaning of the three strikes law, how do you now plead to that charge?

A No contest.

Q And to the allegation made pursuant to Penal Code section 12022(b)(2), which alleges that you personally used a dangerous and deadly weapon which was a tire iron, in the commission of that offense, causing it to be a serious felony, do you admit or deny that allegation?

A Admit.

Q As to Count 5 of the Information, Mr. Archer, which charges you with the crime of assault by means of force likely to produce great body injury in violation of Penal Code section 245(a)(1), how do you now plead to that charge?

A No contest.

Q And as to the allegation made pursuant to Penal Code section 12022.7(a), which alleges that you personally inflicted great bodily injury upon the victim in that particular charge, who is Hagi Ahmad, do you admit or deny that allegation?

A Admit.

MR. HUNTLEY: Can I have one moment?

MR. DENTON: Sure.

(Counsel and client conferred sotto voce.)

Q **(By Mr. Denton)** As to Count 6, Mr. Archer, which charges you with the felony crime of assault with a deadly weapon in violation of Penal Code section 245(a)(1) with a tire iron, which is a serious felony within the meaning of the three strikes law, how do you now plead to that charge?

A No contest.

Q And as to Count 7, Mr. Archer, which charges you with the felony crime of assault with a deadly weapon in violation of Penal Code section

245(a)(1), the weapon being a tire iron -- this is a serious felony within the meaning of the three strikes law -- how do you now plead to that charge?

A No contest.

Q And to the special allegation made pursuant to Penal Code section 1022.7(a), which alleges that you personally inflicted great bodily injury, the victim in this case -- in that charge who is Kipp, K-i-p-p; Skaden, S-k-a-d-e-n, which causes that crime to be a serious and violent felony, do you admit or deny that allegation?

A Admit.

Q As to your prison priors, Mr. Archer, there are four prison priors that are alleged. Each is alleged pursuant to Penal Code section 667.5(d). I will list them. The first one is Case LA005336. It's a charge of violating and being convicted of violating Penal Code section 520 on December 11 of 1990 in the Los Angeles County Superior Court.

The allegation alleges that you were convicted of a felony charge, that you were sentenced to state prison, that you served a term therein and have not been free of prison custody for at least five consecutive years since your release.

You admit that allegation with respect to that case?

A Yes.

Q With respect to Case BA159059 wherein you were convicted of violating Health and Safety Code

section 11352 on December 29, 1997, in Los Angeles County Superior Court, pursuant to the same allegation that you serve a term in state prison and have not been free of prison custody for at least five consecutive years since your release, do you admit that allegation with respect to that case?

A Yes.

Q With respect to Case BA211084, it's alleged that you were convicted of violating Health and Safety Code section 111352 on February 19 of 2002 in Los Angeles County Superior Court, that you served a term in state prison as a result of that conviction and have not been free of prison custody for at least five consecutive years since your release. With respect to that allegation, do you admit that or deny that?

A Admit.

Q And with respect to Case BA377227, it's alleged that you were convicted of violating Penal Code section 487(a). It occurred on February 24 of 2011 in Los Angeles County Superior Court.

It's also alleged that you served a term in state prison as a result of that conviction and have not been free of prison custody for at least five consecutive years since your release. Do you admit or deny that allegation?

A Admit.

MR. DENTON: People join in the jury waiver.

MR. HUNTLEY: May I have a moment, Your Honor?

THE COURT: Yes.

(Counsel and client conferred sotto voce.)

THE COURT: Ready to go?

MR. HUNTLEY: Yes.

THE COURT: Having heard the defendant being advised and questioned concerning his rights and the consequences of his plea and being satisfied with the answers to those questions, and the defendant being represented by counsel and consulting with counsel as he deemed appropriate, I find that the defendant has knowingly, expressly, intelligently and understandingly waived and given up his rights and entered a plea that's, in fact, free and voluntary and made with an understanding of the nature of the plea and the consequences thereof. I accept his plea, and he's convicted upon his plea.

Time waiver for probation and sentencing?

MR. HUNTLEY: (Unintelligible).

THE COURT: Pardon me?

MR. HUNTLEY: Time is waived.

THE COURT: Probation and sentencing -- we'll set it out 90 days.

MR. HUNTLEY: I was going to ask for February 19.

THE COURT: I can do February 19. That's not that big a deal.

MR. HUNTLEY: Okay. 8:30 a.m., this department.

The defendant's ordered out.

THE DEFENDANT: Judge Ryan.

THE COURT: Yes, sir.

THE DEFENDANT: I want to apologize for my attitude. It's a lot of time.

THE COURT: No problem. Your apology's accepted.

THE DEFENDANT: Thank you, judge.

THE COURT: All right. Probation -- the defendant's ordered out. It's now no bail because he's convicted. You want to dismiss Counts 8 and 9 right now?

MR. DENTON: Can we do that, Your Honor, at the time of sentencing please?

THE COURT: Sure.

Any objection, Mr. Huntley?

MR. HUNTLEY: No, Your Honor.

THE COURT: Okay. Technically, Mr. Huntley, there's a general time waiver as to 8 and 9?

MR. HUNTLEY: Absolutely.

THE COURT: All right. I've made a careful note here, and we'll go from there.

MR. HUNTLEY: Thank you.

THE COURT: All right. Mr. Archer, I'll see you back in February. You keep working on those programs, and I hope things work out on them for you.

THE DEFENDANT: Thank you, sir. You have a wonderful day.

THE COURT: Thank you. The defendant's remanded.

(The matter was continued to Tuesday, February 19, 2013, for further proceedings.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT C-130 HON. WILLIAM C. RYAN, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT, VS.	NO. BA390420
VAUGHN ARCHER-01, AKA "SAMMIE ARCHER," DEFENDANT-APPELLANT.	REPORTER'S CERTIFICATE

I, RONALD H. KIM, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES F1-F29, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE ABOVE-ENTITLED CAUSE ON NOVEMBER 1, 2012.

DATED THIS 1ST DAY OF DECEMBER, 2013.

_____,CSR #12299, RPR.
RONALD KIM, OFFICIAL REPORTER

APPENDIX J

CASE NUMBER: BA390420-01
CASE NAME: PEOPLE VS. VAUGHN ARCHER
A.K.A. "SAMMIE ARCHER"
LOS ANGELES, CA WEDNESDAY; JULY 31, 2013
DEPARTMENT 130 HON. C.H. REHM, JUDGE
REPORTER: ROSEMARY ARTEAGA, CSR NO. 11671
TIME: MORNING SESSION.

APPEARANCES:
DEFENDANT PRESENT IN PROPRIA PERSONA;
THE PEOPLE ARE PRESENT
AND REPRESENTED BY DEPUTY DISTRICT
ATTORNEY GREGORY DENTON.

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT:)

THE COURT: THIS IS THE CASE OF THE PEOPLE VS. VAUGHN ARCHER, A-R-C-H-E-R, BA390420.

MAY WE HAVE THE APPEARANCES OF COUNSEL PLEASE. FOR THE PEOPLE?

MR. DENTON: GREGORY DENTON FOR THE PEOPLE. GOOD MORNING, YOUR HONOR.

THE COURT: MR. ARCHER IS WITH US IN CUSTODY. GOOD MORNING, MR. ARCHER.

THE DEFENDANT: GOOD MORNING JUDGE.

THE COURT: MR. ARCHER, YOU HAVE BEEN ACTING AS YOUR OWN ATTORNEY. IS THAT WHAT YOU WISH TO CONTINUE TO

DO AT THIS TIME?

THE DEFENDANT: YES, SIR.

THE COURT: THANK YOU. WE'RE HERE TO CONSIDER A MOTION BY THE DEFENDANT, MR. ARCHER, TO WITHDRAW HIS NOVEMBER 1ST, 2012 PLEA OF NOT GUILTY AS FOLLOWS:

IN COUNT ONE TO A VIOLATION OF PENAL CODE SECTION 211, SECOND DEGREE ROBBERY;

IN COUNT TWO A VIOLATION OF PENAL CODE SECTION 215 SUBPARAGRAPH (A), CARJACKING;

COUNT THREE A VIOLATION OF PENAL CODE SECTION 211 SECOND DEGREE ROBBERY;

COUNT FOUR A VIOLATION OF PENAL CODE SECTION 215 SUBPARAGRAPH (A) CARJACKING AND IN COUNTS 5, 6 AND 7 TO VIOLATIONS OF PENAL CODE SECTION 245 SUBPARAGRAPH (A) (1) ASSAULT WITH GREAT BODILY INJURY.

MR. ARCHER ALSO ADMITTED THE SPECIAL ALLEGATIONS OF PERSONAL INFLICTION OF GREAT BODILY INJURY UNDER PENAL CODE SECTION 12022.7 SUBPARAGRAPH (A) AND PERSONAL USE OF A DANGEROUS AND DEADLY WEAPON UNDER PENAL CODE SECTION 12022 SUBPARAGRAPH (B) (2).

THE DEFENDANT BARGAINED FOR AND RECEIVED THE AGREED UPON DISPOSITION AT THAT TIME OF 27 YEARS AND FOUR MONTHS IN STATE PRISON. AT THE DEFENDANT'S REQUEST THE MATTER WAS CONTINUED FOR SENTENCING TO ALLOW HIM THE OPPORTUNITY TO COMPLETE VARIOUS LOCAL SPECIAL CUSTODIAL PROGRAMS. SUBSEQUENTLY THE DEFENDANT FILED THIS MOTION TO WITHDRAW HIS PLEA.

THE DEFENDANT CONTENDS THAT HIS PLEA WAS

MADE UNDER DURESS WHEN HE WAS NOT AWARE OF ITS CONSEQUENCES OR CIRCUMSTANCES. HE ASSERTS THAT THE TRIAL COURT PROSECUTING AND DEFENSE ATTORNEY USED FRAUD AND DURESS, TRICKERY, DECEPTION AND ILLEGAL THREATS TO INDUCE HIM TO ENTER AN INVOLUNTARY PLEA. THE DEFENDANT ASSERTS THAT HIS DEFENSE ATTORNEY DID NOT INVESTIGATE THE FACTS OR THE LAW AND WAIVED FURTHER ARRAIGNMENT ON THE SECOND AMENDED COMPLAINT OR HIS DEFENSE ATTORNEY DID NOT DISCUSS LESSER INCLUDED OFFENSES TO PENAL CODE SECTION 245 OR HIS DEFENSE ATTORNEY DID NOT DISCUSS THE OPERATION OF PENAL CODE SECTION 654 AND SECTION 1023.

THE DEFENDANT ARGUES THAT HIS ATTORNEY TOLD HIM TO ENTER A PLEA IN ORDER TO EVADE HIS DEFENSE ATTORNEY'S DUTY TO INVESTIGATE. ALL THIS THE DEFENDANT ARGUES CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL. THE PEOPLE CONTEND THAT THE DEFENDANT HAS FAILED TO ESTABLISH A STRONG SHOWING BY CLEAR AND CONVINCING EVIDENCE OF FRAUD, MISTAKE, INADVERTENCE, IGNORANCE OR INEFFECTIVE ASSISTANCE OF COUNSEL OR ANY GROUND TO GRANT THE REQUEST OF RELIEVE.

MR. ARCHER, IS THERE ANYTHING YOU WOULD LIKE TO ADD TO YOUR PLEADING?

THE DEFENDANT: YES, I WOULD, YOUR HONOR.

ON THE NOVEMBER 1ST, 2012 TRANSCRIPTS I CAN PROVE THAT THE COURT THREATENED ME BY STATING BASICALLY, YOU ARE GOING TO DIE IN PRISON. AT LEAST THE PEOPLE ARE OFFERING YOU LIFE AFTER YOU DO YOUR TIME.

THE COURT: I RECALL READING THAT.

THE DEFENDANT: YES. AND THE REASON I AM SAYING THAT MY PLEA WAS INVOLUNTARY ON PAGE -- IN CASE LAW BEHIND INVOLUNTARY PLEA, IT HAS LONG BEEN HELD AND ESTABLISHED GUILTY PLEAS OBTAINED THROUGH COERCION, INDUCEMENT --

THE REPORTER: I NEED YOU TO SLOW DOWN.

THE DEFENDANT: IN *PEOPLE V. SANDOVAL* 2006, 140 CAL. APP. 4TH, 124 THE COURT STATES, IT HAS LONG BEEN HELD AND ESTABLISHED THAT GUILTY PLEAS OBTAINED THROUGH COERCION, TERROR, INDUCEMENTS, SUBTLE OR BLATANT THREATS ARE INVOLUNTARY AND VIOLATE DUE PROCESS.

DUE TO THE COURT STATING THAT I WAS GOING TO DIE IN PRISON, I FURTHER STATED ON PAGE 12 LINE 24 OF THE SAME TRANSCRIPTS THAT I DIDN'T HAVE A CHOICE. I ALSO STATED ON PAGE 17 LINES TEN AND 11, AND 21, STATING THAT I DON'T HAVE A CHOICE AND I AM GIVING RESISTANCE. ON PAGE 18, ONE THROUGH THREE GIVING RESISTANCE STATING I HAD NO CHOICE. LINES 10, 11, 14, 18, 19, 20 AND 21 GIVING RESISTANCE. PAGE 19 LINES THREE THROUGH SEVEN SHOWING RESISTANCE AND STATING I HAD NO CHOICE.

APPELLATE COURT HAS DISTINGUISHED THE DEFINITION OF INVOLUNTARY DONE WITHOUT CHOICE OR AGAINST ONE'S WILL UNINTENTIONAL, UNWILLING, RELUCTANT OFFERING RESISTANCE *PEOPLE V. HUNT* 1985 174, CAL. APP. 3D 95.

THE COURT: LET'S ME ASK YOU A QUESTION. ON PAGE 19 STARTING LINE 17 YOU STATE, QUOTE, I HAVE NO CHOICE. YES, I WANT TO TAKE.

THE COURT RESPONDED, YES, YOU HAVE A CHOICE.

IF YOU SAY THAT ONCE MORE, YOU ARE GOING TO TRIAL. OKAY. DON'T -- I AM NOT GOING TO LET YOU MAKE A FALSE RECORD. YOU RESPOND, I AM NOT MAKING A FALSE RECORD. THE COURT SAID, YOU ARE MAKING A FALSE RECORD WHEN YOU SAY YOU DON'T HAVE A -- YOU CUT THE COURT OFF AND SAID, NO. THE COURT THEN SAID, I AM TAKING A RECESS.

THE DEFENDANT: OKAY, SIR. DURING THAT RECESS THE COURT TOOK -- THE BAILIFF TOOK ME INSIDE THE HOLDING CELL AND MY ATTORNEY CAME IN WITH THIS PHOTO RIGHT HERE (INDICATING) AND HE TOLD ME IF YOU SEE -- IF THE JURY SEES THIS PHOTO, YOU ARE GOING TO GET LIFE IN PRISON.

THE COURT: WHY DON'T YOU DESCRIBE THAT PHOTO?

THE DEFENDANT: I DON'T KNOW WHAT IT IS. I GOT THIS IN MY DISCOVERY FROM MR. HUNTLEY. I MADE A STATEMENT ON THE RECORD THE DAY THAT I WENT PRO PER. THAT MR. HUNTLEY SHOWED ME A PHOTO THAT -- AND TOLD ME IT WASN'T DUE TO MY CASE BECAUSE IN MY POLICE REPORTS --

THE COURT: YES, SIR?

THE DEFENDANT: THE POLICE REPORT STATES THERE IS NO PHOTOS TAKEN AND ALSO THE SENTENCE WAS ILLEGAL BECAUSE I WAS NOT AWARE OF PENAL CODE SECTION 644. I WAS --

THE COURT: WE ARE NOT HERE TO DISCUSS AN ILLEGAL SENTENCE. WE'RE HERE TO DISCUSS YOUR REQUEST TO WITHDRAW PLEA.

THE DEFENDANT: MY REQUEST IS BECAUSE I WASN'T AWARE.

THE COURT: GO AHEAD.

THE DEFENDANT: *IN PEOPLE V. JOHNSON* -- IN *PEOPLE V. JOHNSON* IT SAYS, COUNSEL HAS A DUTY TO INVESTIGATE ALL FACTS OF LAW THAT MAY BE AVAILABLE TO HIS DEFENDANT BEFORE PLEADING HIM TO PLEAD GUILTY. IN GUILTY PLEAS A DEFENDANT MUST BE AWARE OF ALL RELEVANT CIRCUMSTANCES AND LIKELY CONSEQUENCES OF HIS ACTION. AN INMATE OR DEFENDANT MAY WITHDRAW HIS PLEA DUE TO INADVERTENCE OR ANY FACTOR.

I WASN'T AWARE OF THE RELEVANT CIRCUMSTANCE OR THE LIKELY CONSEQUENCES OF MY ACTIONS WHEN I TOOK THIS PLEA. I WASN'T AWARE THAT I COULD NOT BE SENTENCED TO 34 YEARS. IT WAS NOT MY MAXIMUM POTENTIAL SENTENCE.

THE COURT: NO. YOUR MAXIMUM POTENTIAL SENTENCE APPEARED TO BE LIFE.

THE DEFENDANT: BUT IT WASN'T 34 TO LIFE. THAT IS -- THAT IS A SERIOUS MISAPPREHENSION OF THE CONSEQUENCES OF THE PLEA BARGAIN AND THE PLEA CANNOT STAND BECAUSE IT WASN'T 34 TO LIFE. BECAUSE IF I WOULD HAVE WENT TO TRIAL, THE 245S COULDN'T BE CHARGED WITH 211 BECAUSE COOPERATIVE ACTS CONSTITUTE BUT ONE CRIME. YOU CAN'T GET CHARGED WITH ASSAULT AND YOU CAN'T GET CHARGED WITH ROBBERY. IN 245 BANS PROSECUTION FROM ME GETTING CHARGED WITH 211 AND 215. THAT IS UNDER THE STATUTE OF 215.

IT SAYS, IT IS NOT JUST TO SUPERCEDE 211 BUT NO PERSON MAY BE CONVICTED -- NO PERSON MAY BE CONVICTED OF 211 AND 215, BUT NO PERSON SHALL BE PUNISHED. I WAS PUNISHED FOR 215 AND 211. AND MY ATTORNEY SHOULD HAVE

CAUGHT THIS ERROR BEFORE HE COMMITTED ME TO PLEAD GUILTY, WHICH HE DIDN'T, WHICH IS A DERELICTION OF DUTY *PEOPLE V. JOHNSON* 1995, 36 CAL. APP. 1351, 1357 AND THAT'S THE FOURTH DISTRICT.

THE COURT: IS THERE ANYTHING ELSE YOU WOULD LIKE TO TELL US, SIR?

THE DEFENDANT: YES. ALSO, IN THE NOVEMBER 1ST TRANSCRIPT ON PAGE TEN LINES FIVE THROUGH 11 MY ATTORNEY KNEW THAT IT WAS AN ILLEGAL SENTENCE AND HE DIDN'T INFORM ME AND IT WAS AN ILLEGAL SENTENCE. AND BY HIM ALLOWING ME TO PLEA TO AN ILLEGAL SENTENCE, IT'S A DERELICTION OF HIS DUTY AND INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE I WAS NOT AWARE OF THE RELEVANT CIRCUMSTANCE OF MY LIKELY CONSEQUENCE OF MY ACTIONS BECAUSE HE ALLOWED ME TO PLEAD TO AN ILLEGAL PLEA BARGAIN WHEN I WASN'T AWARE OF THE CONSEQUENCES. THANK YOU.

THE COURT: WAS THERE ANYTHING FURTHER?

THE DEFENDANT: YES. YES. AND PLUS THE RECORD STATES THAT I GAVE UP -- I WAIVED MY FURTHER ARRAIGNMENT RIGHTS. I NEVER WAIVED MY FURTHER ARRAIGNMENT RIGHTS. THIS IS KIND OF HARD FOR ME TO GET MY PAPERS TOGETHER. I CAN'T REMEMBER WHAT PAGE IT WAS. I THINK IT'S PAGE --

THE COURT: I READ YOUR TRANSCRIPT. I REMEMBER YOUR COUNSEL --

THE DEFENDANT: WAIVING MY RIGHT WITHOUT MY KNOWLEDGE. I HAD NO KNOWLEDGE. I DIDN'T KNOW WHAT AN AMENDMENT WAS. I DIDN'T KNOW WHAT AN INFORMATION WAS.

I DIDN'T KNOW WHAT AN AMENDED INFORMATION WAS. I DIDN'T KNOW BY ME WAIVING MY RIGHTS THAT IT ADDED MORE TIME AT THE TIME OF THIS PLEA. THE ONLY WAY I COULD HAVE GOT 27 YEARS IS BY GIVING UP MY CONSTITUTIONAL RIGHTS THAT DAY. IF I WOULD HAVE WENT TO TRIAL, IT COULDN'T HAVE BEEN 34 TO LIFE. I WAS NOT FACING 34 TO LIFE BECAUSE THE LAW AND DUE PROCESS PROTECTS ME FROM BEING CHARGED THE WAY I WAS CHARGED DURING THIS PLEA BARGAIN.

I COULDN'T GET CHARGED FOR THOSE CHARGES. I COULDN'T GET CHARGED FOR THE 245 AND THE ROBBERY AND THE CARJACKING BECAUSE THOSE ARE NECESSARY INCLUDED OFFENSES AND THEY VIOLATE 654 AND THEY VIOLATE THE 14TH AMENDMENT UNDER CONSTITUTION AND THE FIFTH AMENDMENT UNDER DUE PROCESS. THAT LIMITS THE COURT TO METE OUT COMMUNITY OR GIVING CONSECUTIVE SENTENCE IN A SINGLE COURSE OF CONDUCT. THIS WAS A COURSE OF CONDUCT.

I AM -- YOU KNOW, I JUST WANT TO BE TREATED FAIR. I DID NOT PLEA VOLUNTARILY. THAT IS WHY I GAVE UP RESISTANCE. THAT IS WHY I SAID I HAD NO CHOICE BECAUSE I WAS THREATENED WITH DYING IN PRISON. I DIDN'T HAVE EFFECTIVE ASSISTANCE OF COUNSEL. HE DIDN'T PROTECT MY RIGHTS. HE WAS ATTORNEY FOR TWO MONTHS. I HAD A PREVIOUS ATTORNEY FOR TEN MONTHS.

THE COURT: YOU BROUGHT THAT OUT DURING THE COLLOQUY --

THE DEFENDANT: THAT IS WHAT I SAID. I JUST WANT MY RIGHTS TO BE PROTECTED BY AN ATTORNEY UNDER THE SIXTH AND 14TH AMENDMENT OF -- THE CALIFORNIA

CONSTITUTION GUARANTEES ME A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, FOR COUNSEL TO RENDER EFFECTIVE ASSISTANCE. THIS COUNSEL'S ASSISTANCE WAS UNREASONABLE.

THE COURT: SIXTH AND AMENDMENT 14 OF THE UNITED STATES CONSTITUTION?

THE DEFENDANT: YES, SIR. THIS ATTORNEY'S ACTION WAS WAY BEYOND THAT OF STANDARDS. IT WAS WAY BELOW. I AM NOT AN ATTORNEY. YOU KNOW, MY WORDS MIGHT BE STAMMERING. THAT'S BECAUSE I AM FIGHTING FOR MY LIFE. I SHOULDN'T HAVE GOTTEN THIS SENTENCE AND I SHOULDN'T HAVE BEEN THREATENED BY THE COURT OR PUT UNDER DURESS. IF YOU DON'T TAKE THIS DEAL, YOU ARE GOING TO GO TO TRAIL. I COULD NOT GO TO TRIAL WITH AN ATTORNEY THAT TOLD THE PRIOR JUDGE AT A *MARSDEN* MOTION THAT I AM GOING TO USE THE OTHER ATTORNEYS' NOTES TO TAKE YOU TO TRIAL.

THE COURT: IS THERE ANYTHING ELSE?

THE DEFENDANT: NO, SIR.

THE COURT: MR. DENTON, DO THE PEOPLE WISH TO BE HEARD?

MR. DENTON: YES. THANK YOU.

MR. ARCHER HAS MADE A LOT OF CONCLUSORY STATEMENTS IN HIS MOTION AND IN THE STATEMENTS TO THE COURT TODAY WHICH I DON'T THINK ARE BACKED UP BY ANY FACTS. HE HAS TOLD THE COURT THAT MR. HUNTLEY ACTED INEFFECTIVELY, BUT HAS NOT SAID WITH ANY SPECIFICITY AT ALL WHAT HE FAILED TO DO. HE SAID HE DIDN'T INVESTIGATE, BUT HE HASN'T TOLD THE COURT WHAT FACTS MR. HUNTLEY DIDN'T UNCOVER OR PEOPLE THAT HE DIDN'T TALK

TO AND ANY EVIDENCE THAT WAS EXCULPATORY THAT MR. HUNTLEY DIDN'T FIND.

I THINK THE MOST RELEVANT PART OF THIS MOTION THAT I WANTED TO ADDRESS AND I WOULD BE HAPPY TO COMMENT ON ANY OTHER QUESTIONS THAT THE COURT MIGHT HAVE, BUT MR. ARCHER IS INCORRECT WHEN HE SAID AND SA' THAT HE WAS NOT INFORMED OF THE CONSEQUENCES OF THE POTENTIAL SENTENCE IN THIS CASE AND HE HAS INDICATED THAT BECAUSE OF SECTION 654 OF THE PENAL CODE SECTION' THAT HE COULD NOT BE SENTENCED TO WHAT THE COURT AND ' COUNSEL HAD TOLD HIM PREVIOUSLY.

I WOULD JUST LIKE TO LAYOUT FOR THE COURT VERY BRIEFLY WHAT THE POTENTIAL SENTENCE IS IN NUMBERS TO SHOW THAT MR. ARCHER IS WRONG WHEN HE TELLS THE COURT THAT HE WAS NOT AWARE OF THE POTENTIAL SENTENCE. I TRIED TO MAKE THIS AS SIMPLE AS POSSIBLE BY ELIMINATING POSSIBILITY OF 654 PROBLEMS. AND SO THERE IS ONLY A FEW COUNTS HERE -- CHARGES THAT REALLY COUNT IN THE WAY OF MAXIMUM SENTENCE AND IT IS BASICALLY -- THIS IS VERY EASY TO FOLLOW.

MR. ARCHER COULD RECEIVE FIVE YEARS FOR HIS 667 SUBDIVISION (A) SUBDIVISION (1) ENHANCEMENT. HE COULD RECEIVE AN ADDITIONAL FOUR YEARS FOR THE FOUR PRISON SENTENCE COMMITMENTS THAT HE HAD PURSUANT TO 667.5 (B). SO ON THOSE TWO ENHANCEMENTS ALONE HE COULD RECEIVE NINE YEARS.

ON COUNT FOUR, WHICH IS THE CARJACKING OF MR. MURGA, HE COULD RECEIVE A SENTENCE OF 18 YEARS WHICH

IS THE HIGH TERM OF NINE YEARS DOUBLED FOR 18.

THAT CONCERNS MR. MURGA. HE COULD RECEIVE AN ADDITIONAL THREE YEARS FOR THE USE OF THE DEADLY WEAPON ON THAT COUNT WITH MR. MURGA AS THE VICTIM. AS TO ANOTHER VICTIM BY THE NAME OF MR. SCADEN (PHONETIC) WHICH IS IN COUNT SEVEN, HE COULD RECEIVE TWO YEARS IN STATE PRISON, WHICH IS ONE-THIRD OF THE DOUBLED MIDTERM ON THE 245 FOR A TOTAL OF TWO YEARS ON COUNT SEVEN.

AND THEN HE COULD RECEIVE AN ADDITIONAL THREE YEARS ON COUNT NINE, WHICH IS THE GREAT BODILY INJURY INFLICTION ON THE 209 CHARGE. THAT WOULD BE A DETERMINANT TERM. THE VICTIM THERE IS MR. AHMAD, A-H-M-A-D, SO THERE ARE REALLY ONLY THREE VICTIMS THAT WE'RE TALKING ABOUT HERE MR. MURGA, MR. SCADEN, AND MR. AHMAD.

AND IF YOU ONLY TAKE THE PRINCIPAL CHARGE FOR EACH ONE OF THOSE, MR. MURGA'S CHARGES COME UP TO 18 YEARS FOR THE CARJACKING PLUS THREE FOR THE USE OF THE DEADLY WEAPON, WHICH IS 21 YEARS. THERE IS AN ADDITIONAL NINE YEARS IN ENHANCEMENTS FOR THE FOUR PRISON TERMS AND THE 667 (A). THAT COMES UP TO 30. HE COULD RECEIVE AN ADDITIONAL TWO YEARS FOR THE 245 ON MR. SCADEN AND AN ADDITIONAL THREE YEARS FOR THE GBI INFLICTION ENHANCEMENT ON MR. AHMAD. THAT IS 35 YEARS IN STATE PRISON WITHOUT TALKING ABOUT THE 209 (B) CHARGE IN COUNT NINE. THAT IS WHY WE HAVE A MAXIMUM SENTENCE POSSIBILITY OF 35 YEARS TO LIFE. IT IS A 35-YEAR DETERMINANT TERM. AND THEN HE WOULD RECEIVE A LIFE TERM

ON THAT FOR 209.

THAT IS THE SIMPLIST WAY TO LOOK AT ALL THE CHARGES IN THIS CASE. AND SO WHEN WE TOLD MR. ARCHER THAT HE WAS FACING 34 YEARS TO LIFE, THAT WAS PROBABLY INCORRECT. HE WAS ACTUALLY FACING 35 YEARS TO LIFE AND I THINK THE COURT AND I TOLD MR. ARCHER ABOUT THAT. HE KNEW THAT. HE KNEW HIS CHOICE WAS TO TAKE THE PLEA BARGAIN THAT WAS OFFERED OR GO TO JURY TRIAL AND THAT WAS HIS CHOICES AND HE CHOSE THE PLEA BARGAIN AND NOW HE DOESN'T LIKE HIS OPTIONS. SO UNLESS THE COURT --

THE COURT: MR. ARCHER, I SEE YOU RAISING YOUR HAND. I WILL GIVE YOU A CHANCE TO RESPOND IN JUST A SECOND, SIR.

THE DEFENDANT: THANK YOU, SIR.

MR. DENTON: UNLESS THE COURT HAS ANY QUESTIONS, I SUBMIT.

THE COURT: AT THIS POINT THE COURT HAS NO QUESTIONS. YES, SIR, MR. ARCHER?

THE DEFENDANT: YES, SIR. I DON'T HAVE STRIKES. SO THE 667 (A) IT DOESN'T APPLY TO ME, SIR. THEY CHECKED THAT. SO BY HIM TELLING YOU THIS DOUBLES UP ON ANYTHING, I CANNOT BE DOUBLED UP BECAUSE I HAVE NO STRIKES AND HE PUT IN AN AMENDMENT AT THE TIME OF TRIAL AND STATED ON THESE TRANSCRIPTS I HAD NO STRIKES. SO MY MAXIMUM POTENTIAL TERM WAS NOT 35 TO LIFE. SO THAT IS INCORRECT, SIR. THAT IS WHY I SAY THAT I CANNOT BE FACING 34 YEARS TO LIFE. THAT IS A SERIOUS MISAPPREHENSION OF THE PENAL CONSEQUENCE OF THE PLEA

BARGAIN BY TELLING ME I WAS FACING 34 YEARS TO LIFE WHEN I WASN'T BECAUSE I HAVE NO STRIKES. AND THAT MAKES A BIG DIFFERENCE. MY MAXIMUM POTENTIAL TERM IS PROBABLY 17 YEARS TO LIFE, NOT 34. AND THE STRIKE ALLEGATIONS WERE PROVEN AND THEY WERE STRICKEN IN THE PROCEEDINGS NOVEMBER 1ST.

THE COURT: MR. DENTON.

MR. DENTON: I AM GOING TO HAVE TO LOOK AT THAT, YOUR HONOR. THE INFORMATION CONTAINS THE ALLEGATION OF A STRIKE AS THE COURT CAN SEE.

THE COURT: THE INFORMATION DOES.

MR. DENTON: AND --

THE DEFENDANT: PAGE SIX, SIR, PAGE SIX LINE ONE AND TWO, "BECAUSE HE DOESN'T HAVE PRIOR STRIKES, THE 667 ALLEGATION GOES OUT?"

MR. DENTON: "CORRECT".

THE COURT: MR. DENTON.

MR. DENTON: I AM LOOKING AT THAT, YOUR HONOR.

THE DEFENDANT: EXCUSE ME, JUDGE REHM.

THE COURT: YES, SIR.

THE DEFENDANT: I WOULD ALSO LIKE TO STATE I HAVE NO PAPERS TO SHOW I WAS RE-ARRAIGNED ON THE AMENDED CHARGES ON THE 209. WHEN I LEFT PRELIMINARY HEARING, THEY AMENDED CHARGES. THEY AMENDED THE 209, THE 245 ANOTHER 245 AND 243 ON THESE ALLEGED VICTIMS. AND I WAS NEVER RE-ARRAIGNED ON ANY OF THE CHARGES BECAUSE IT AFFECTED -- IT AGGRAVATED A POTENTIAL PUNISHMENT AND I SHOULD HAVE BEEN RE-ARRAIGNED. MY ATTORNEY NEVER TOLD

ME OF MY RIGHT TO BE RE-ARRAIGNED, BUT HE DID, YOU KNOW, WAIVE FURTHER ARRAIGNMENT DURING THE PLEA BARGAIN.

THE COURT: HE DID WAIVE FURTHER ARRAIGNMENT ON THE SECOND AMENDED INFORMATION.

THE DEFENDANT: YEAH, BUT I NEVER HAD KNOWLEDGE OF IT, THE AMENDED INFORMATION AT ALL. I NEVER --

THE COURT: YOU WERE IN COURT WHEN IT WAS DISCUSSED.

THE DEFENDANT: YEAH, BUT I DIDN'T KNOW WHAT IT WAS. HE NEVER EXPLAINED THAT TO ME, SIR.

THE COURT: YOU WERE ARRAIGNED ON THE COMPLAINT; IS THAT CORRECT? OR YOU WAIVED ARRAIGNMENT ON THE COMPLAINT; CORRECT?

THE DEFENDANT: NO, I DIDN'T. I DIDN'T WAIVE. MY ATTORNEY WAIVED IT WITHOUT EVEN ASKING ME.

THE COURT: THEN YOU WAIVED ARRAIGNMENT ON THE INFORMATION.

THE DEFENDANT: I NEVER WAIVED.

THE COURT: YOUR ATTORNEY WAIVED IT ON YOUR BEHALF.

THE DEFENDANT: BUT HE CAN WAIVE MY RIGHTS, YOUR HONOR? HE CAN'T WAIVE MY RIGHTS. HE NEVER HAD MY PERMISSION, SIR.

THE COURT: WITH YOUR -- I UNDERSTAND THAT IS WHAT YOU ARE SAYING TODAY.

THE DEFENDANT: YES, SIR.

THE COURT: MR. DENTON, WOULD YOU LIKE SOME TIME TO REVIEW -- I KNOW THIS WAS A SUBSTANTIALLY PLEAD INFORMATION.

WOULD YOU LIKE SOME TIME?

MR. DENTON: IF I COULD, YOUR HONOR.

THE COURT: SURE. WE WILL PUT THIS ON SECOND CALL SO WE CAN HANDLE SOME OF THESE OTHER MATTERS.

(RECESS TAKEN.)

(AFTERNOON PROCEEDINGS REPORTED BY CERTIFIED COURT REPORTER SYLVIA ALMAGUER-MILLER.)

(NEXT PAGE IS N-51.)

CASE NUMBER: BA390420-01
CASE NAME: PEOPLE VS. VAUGHN ARCHER
(A.K.A. "SAMMIE ARCHER")
LOS ANGELES, CALIFORNIA WEDNESDAY, JULY 31, 2013
DEPARTMENT 130 HON. C. H. REHM, JUDGE
REPORTER: SYLVIA ALMAGUER-MILLER, CSR #8767
TIME: 3:04 P.M.
APPEARANCES:
THE PEOPLE OF THE STATE OF CALIFORNIA REPRESENTED BY GREGORY DENTON, DEPUTY DISTRICT ATTORNEY;
01-DEFENDANT, VAUGHN ARCHER, PRESENT IN PROPRIA PERSONA.

THE COURT: WE'RE BACK ON THE RECORD IN PEOPLE VERSUS ARCHER, A-R-C-H-E-R, NUMBER BA390420, WITH THE SAME LITIGANTS PRESENT.

MR. ARCHER, I APOLOGIZE FOR NOT GETTING YOU BACK HERE SOONER. BY THE TIME WE WORKED THROUGH THIS MORNING'S CALENDAR, THE JURORS WERE HERE FOR OUR TRIAL. SO THIS IS THE FIRST BREAK WE GOT.

THE 01-DEFENDANT: YES, SIR.

THE COURT: MR. DENTON.

MR. DENTON: YES, YOUR HONOR.

THE COURT: WHAT WOULD THE PEOPLE LIKE TO SAY CONCERNING MR. ARCHER'S CONCERN THAT THE POTENTIAL SENTENCE WAS INCORRECTLY CALCULATED AND/OR PRESENTED TO HIM?

MR. DENTON: WELL, WHAT I WOULD SAY, YOUR HONOR, IS

THAT EXAMINING THE TRANSCRIPT OF THE DISCUSSIONS THAT JUDGE RYAN HAD WITH THE DEFENDANT AND MR. HUNTLEY AND MYSELF ON NOVEMBER THE 1ST, IT'S FAIRLY CLEAR THAT THE JUDGE WAS OPERATING, AT LEAST INITIALLY, ON THE ASSUMPTION THAT MR. ARCHER HAD A STRIKE, WHICH WOULD OBVIOUSLY ADD SIGNIFICANT TIME TO HIS SENTENCE, AND A 667(A)(1) ALLEGATION, WHICH WOULD ADD AN ADDITIONAL FIVE YEARS. AND IN THE INITIAL PAGES OF THE TRANSCRIPT, THERE'S THE DISCUSSION BETWEEN THE GROUP OF US AS TO THE -- SOME CALCULATIONS AND THEN A BREAK IS TAKEN IN THE PROCEEDINGS, AND THERE ARE FURTHER DISCUSSIONS WHICH ARE RESUMED ON PAGE -- PAGE FIVE WHERE JUDGE RYAN THEN COMES OUT AND TELLS MR. ARCHER ON THE RECORD THAT THE STRIKE WAS STRICKEN ON PAGE EIGHT OF THE INFORMATION AND THE 667(A) WAS STRICKEN AND SAYS, QUOTE, "HE DOESN'T HAVE ALL OF THOSE PENDING," AND THE CALCULATION I HAD I MADE AS TO HIS MAXIMUM TIME ON HIS -- ON ASSUMING THOSE ARE STRICKEN.

SO PRIOR TO THE PLEA, MR. ARCHER KNEW THAT THE STRIKE WAS STRICKEN AND THAT THE 667(A)(1) ALLEGATION WAS STRICKEN. THERE WAS NOT A FURTHER DETAIL OF A MAXIMUM SENTENCE AT THAT POINT. IT JUST WASN'T DONE. BUT IT WAS CLEAR THAT MR. ARCHER WAS FACING A LIFE SENTENCE ON THE KIDNAPPING CHARGE AND SIGNIFICANT TIME ON THE CHARGES THAT WOULD DEMAND A DETERMINATE SENTENCE. AND THEN WE PROCEEDED INTO A DISCUSSION ABOUT SOME OTHER THINGS SUCH AS PROGRAMMING AND THINGS LIKE THAT FOR MR. ARCHER WHILE HE WAS IN THE COUNTY JAIL.

AND MR. ARCHER WAS TOLD THAT IF HE WERE TO ENTER A PLEA TO THE CHARGES THAT JUDGE RYAN SET FORTH, THAT HE WOULD RECEIVE A SENTENCE OF 27 YEARS AND FOUR MONTHS. AND I'VE GONE

OVER THOSE CALCULATIONS, AND THOSE ARE FAIRLY EASY TO FIGURE OUT.

BUT I HAVEN'T SEEN IT AND I'M NOT AWARE OF ANY INFORMATION WHERE MR. ARCHER WAS TRICKED OR THE SUBJECT OF SOME KIND OF FRAUD OR MISTAKE OR ANYTHING ELSE. IF THERE WAS A MISSTATEMENT ABOUT HIS MAXIMUM SENTENCE EARLY ON IN THE PROCEEDINGS, THAT WAS CORRECTED BY JUDGE RYAN WHEN HE CAME OUT AND TOLD MR. ARCHER THAT THOSE ALLEGATIONS HAD BEEN STRICKEN. SO I'M NOT AWARE OF ANYTHING THAT WOULD REQUIRE THAT MR. ARCHER'S PLEAS BE WITHDRAWN.

I SUBMIT.

THE COURT: THANK YOU.

SO THE BOTTOM LINE, IF I UNDERSTAND IT CORRECTLY, IS THAT NO MATTER HOW ANY OFFER WAS PRESENTED, MR. ARCHER STILL FACED THE POTENTIAL OF LIFE IN STATE PRISON, THE WORSE-CASE SCENARIO IF HE WERE CONVICTED.

MR. DENTON: RIGHT. THAT WOULD HAVE BEEN ON COUNT NINE. CORRECT.

THE COURT: THANK YOU.

YES, SIR. MR. ARCHER.

THE 01-DEFENDANT: YES, SIR.

REGARDING TO THE MATTER THAT MR. DENTON WAS TALKING ABOUT, SIR, IF I WAS FACING 34 YEARS TO LIFE AND THE JUDGE TOLD ME I WAS FACING 34 YEARS TO LIFE AND MADE NO STATEMENT ON THE RECORD OTHER THAN NO STRIKE ALLEGATIONS, THEY SHOULD HAVE TOLD ME THAT I WASN'T FACING 34 YEARS TO LIFE. AND I COULD HAVE PROCEEDED TO TRIAL AND WENT TO TRIAL IF I WASN'T FACING THAT MUCH TIME.

THE COURT: YOU WERE FACING LIFE.

THE 01-DEFENDANT: OKAY. I WAS FACING LIFE. BUT FROM WHAT I KNOW NOW, BECAUSE I WASN'T AWARE AT THE TIME, THAT I WASN'T FACING 34 YEARS TO LIFE, THAT'S A SERIOUS MISAPPREHENSION OF THE PENAL CONSEQUENCES OF A PLEA BARGAIN AND THE PLEA CANNOT STAND. THAT'S IN *PEOPLE VS. JOHNSON*.

THE COURT: BUT YOU WERE AWARE YOU WERE FACING LIFE.

THE 01-DEFENDANT: BUT I WASN'T AWARE I WAS FACING 34. I WAS AWARE I WAS FACING LIFE, BUT 34 TO LIFE IS A BIG SENTENCE COMPARED TO 17 TO LIFE.

THE COURT: AND LIFE IS A HUGE SENTENCE.

THE 01-DEFENDANT: YES. LIFE IS A HUGE SENTENCE. I UNDERSTAND THAT. BUT REGARDLESS, I FEEL THAT LIFE IS LIFE, BUT 34 TO LIFE IS MORE THAN 17 TO LIFE OR MORE THAN 15 TO LIFE.

THE COURT: OKAY.

THE 01-DEFENDANT: I STILL COULD GO TO TRIAL FACING 15 TO LIFE VERSUS 34 TO LIFE VERSUS TAKING A DEAL OF 27 YEARS WHEN MY MAXIMUM -- MY MAXIMUM WAS LIFE, BUT I TOOK -- BUT I PLED UNDER DURESS OR MISTAKEN INADVERTENCE TO 27 YEARS. IF I WOULD HAVE WENT TO TRIAL AND BEAT THE LIFE, I COULDN'T HAVE GOT 27 YEARS.

THE COURT: BUT IF YOU WENT TO TRIAL AND GOT THE LIFE, YOU WOULD BE DOING LIFE.

THE 01-DEFENDANT: YOUR HONOR, THAT'S STILL A MISAPPREHENSION OF THE PENAL CONSEQUENCES, SIR.

THE COURT: THANK YOU.

THE 01-DEFENDANT: AND THAT'S GROUNDS FOR ME TO WITHDRAW MY PLEA.

THE COURT: IS THERE ANYTHING ELSE YOU WANT TO TELL US HERE THIS AFTERNOON, MR. ARCHER?

THE 01-DEFENDANT: YES.

ALSO -- OKAY. WHAT IS IT? ALSO, FURTHER TO SPEAK ON THE ILLEGAL SENTENCE --

THE COURT: YES, SIR.

THE 01-DEFENDANT: -- OR THE INAPPROPRIATE SENTENCE, THE PROBLEM -- MR. HUNTLEY STATED ON PAGE 10, "THE PROBLEM IS YOU CAN'T GET A LEGAL SENTENCE FOR THAT IF --" AND THE COURT SAYS, "IF HE AGREES TO IT, YOU CAN." MR. HUNTLEY SAID, "I DON'T THINK HE'S GOING TO AGREE TO IT."

HE NEVER TOLD ME THAT I WAS PLEADING TO AN ILLEGAL SENTENCE, AND THE JUDGE SAID, "YEAH, HE CAN. YEAH, HE CAN. THERE'S CASE LAW RIGHT ON POINT."

MR. HUNTLEY, JUDGE RYAN, AND MR. DENTON KNEW THAT I WAS PLEADING TO AN ILLEGAL SENTENCE, AND THEY HAD NO REGARD FOR MY CONSTITUTIONAL RIGHTS OR ADVISING ME -- OR MY ATTORNEY ADVISING ME THAT I WAS PLEADING TO THIS. HE KNEW I WAS PLEADING TO IT, AND HE DID NOT ADVISE ME OF IT AND HE DID NOT STOP THE PROCEEDINGS, TAKE ME OUTSIDE, AND INFORM ME THAT I WAS PLEADING TO AN ILLEGAL SENTENCE, AND THAT'S A DERELICTION OF DUTY, AS WELL AS DERELICTION OF DUTY BY HIM NOT CATCHING THE ERROR OF ME FACING 34 YEARS TO LIFE. THAT WAS INCORRECT AND NOT CORRECTING -- NOT CATCHING THE ERROR, THAT'S A DERELICTION OF DUTY ALSO.

ALSO, UNDER *PEOPLE VS. JOHNSON*, WHEN COUNSEL FAIL TO CORRECTLY CALCULATE THE POTENTIAL MAXIMUM SENTENCE BEFORE ALLOWING HIS CLIENT TO PLEAD GUILTY IS A DERELICTION OF

DUTY AND TO ENSURE THAT HIS CLIENT WAS FULLY AWARE OF THE RELEVANT CIRCUMSTANCES AND UNLIKELY CONSEQUENCES OF HIS ACTIONS. I WAS PREJUDICED BY COUNSEL NOT FINDING THESE ERRORS AND ADVISING ME OF IT. PREJUDICE CAN BE MEASURED BY COUNSEL'S ACTS OR OMISSIONS ADVERSELY AFFECTED MY ABILITY TO ENTER A PLEA INTELLIGENTLY, WILLINGLY, AND VOLUNTARILY, WHICH HE DID.

AND IF I WERE TO HAVE KNOWN I WAS FACING 34 YEARS TO LIFE, I WOULD HAVE WENT TO TRIAL BECAUSE THE AMENDED CHARGES THAT THEY AMENDED, IT WAS AMENDED IN 2011. I CAME IN FRONT OF THIS COURT IN 2012.

THE COURT: NOT THIS COURT.

THE 01-DEFENDANT: YEAH.

THE COURT: NOT THIS BENCH OFFICER.

THE 01-DEFENDANT: NO, NOT YOU, SIR. I CAME IN FRONT OF JUDGE RYAN 2012 AND HAVEN'T BEEN ARRAIGNED -- RE-ARRAIGNED ON THESE CHARGES. AND MY ATTORNEY FAILED TO CHALLENGE THESE THREE CHARGES, THE 215 -- I MEAN, THE TWO 245S, 243S ALL ON THE SAME -- ON THE PEOPLE -- THAT THE PEOPLE ARE ALLEGING THAT I ROBBED. AND *PEOPLE VS. LOGAN*, COOPERATIVE ACTS. ONE PUNISHMENT AND ONE CRIME, NOT TWO OR THREE. AND THEY CHARGE ME CONSECUTIVELY WITH THE 245, THE 245, THE 211, THE -- BOTH 211S AND BOTH 215S, AND THAT'S AN ILLEGAL SENTENCE.

THE COURT'S ALLEGED JURISDICTION IN PROVIDING AN ILLEGAL SENTENCE IT SHOULD BE VOID. IT SAYS RIGHT HERE IT WAS MORE THAN I COULD HAVE GOT IF I WOULD HAVE WENT TO TRIAL.

AND AS FAR AS THE 209, HE DOESN'T EVEN BEAT THE DANDERS TEST. I'D LOVE TO GO TO TRIAL WITH THAT.

THE COURT: IS THERE ANYTHING ELSE?

THE 01-DEFENDANT: I'M TRYING TO MAKE SURE I GET EVERYTHING OUT.

THE COURT: TAKE YOUR TIME.

THE 01-DEFENDANT: ALSO, DEFENSE COUNSEL ERRED IN NOT CHALLENGING THE ASSAULT CHARGES ON MR. MURGA, ON MR. HAGAI BECAUSE TO INADVERTENTLY ALLOW THE PROSECUTION TO CHARGE ENHANCEMENTS WITHOUT CHALLENGING SUCH ALLEGATIONS UNDER THE 995 MOTION WOULD BE TO UNDERMINE THE DEFENDANT'S PROCEDURAL RIGHTS GUARANTEED BY THE PRELIMINARY HEARING PROCESS. THAT'S IN *PEOPLE VS. SUPERIOR COURT*. THAT'S PROCEDURAL STUFF TO DO, AND MY ATTORNEY FAILED TO DO THAT, AND THE NEGATIVE EFFECTS OF THAT CAUSED FOR ME TO BE OVERCHARGED AT THE PLEA PROCESS. HE DIDN'T DO HIS JOB. IT WAS INEFFECTIVE ASSISTANCE OF COUNSEL BY HIM NOT CORRECTING THE ERROR, BY HIM NOT INFORMING ME THAT I WASN'T FACING 34 YEARS TO LIFE BEFORE I CAME INTO THE COURTROOM.

COUNSEL HAS A DUTY TO INVESTIGATE ALL FACTS OF LAW BEFORE PERMITTING HIS CLIENT TO PLEAD GUILTY. WHEN THE DEFENDANT HAS BEEN DENIED EFFECTIVE ASSISTANCE OF COUNSEL AND ENTERED A PLEA OF GUILTY, HE IS ENTITLED TO A REVERSAL AND AN OPPORTUNITY TO WITHDRAW HIS PLEA IF HE SO DESIRES. THAT'S IN *PEOPLE VS. JOHNSON* ALSO.

IN ALL THESE ALLEGATIONS IS MY COUNSEL ACTED INCOMPETENTLY BY ALLOWING ME TO PLEAD GUILTY WITHOUT INVESTIGATING ALL THE FACTS OF LAW THAT'S AVAILABLE TO HIS CLIENT.

YES, SIR.

THE COURT: ALL RIGHT. WOULD YOU LIKE TO ADD ANYTHING ELSE TODAY?

THE 01-DEFENDANT: NO, SIR.

THE COURT: MR. DENTON, ANYTHING FURTHER?

MR. DENTON: NOTHING ELSE TO ADD, YOUR HONOR.

THE COURT: THANK YOU.

COUNSEL, THE COURT'S GOING TO TAKE ABOUT A FIVE-MINUTE RECESS. I'LL BE RIGHT BACK.

(A RECESS WAS TAKEN AT THIS TIME.)

THE COURT: WE ARE BACK ON THE RECORD IN PEOPLE VERSUS ARCHER, BA390420, WITH THE SAME LITIGANTS PRESENT.

THANK YOU, MR. ARCHER AND COUNSEL, FOR YOUR INDULGENCE.

ON NOVEMBER 1ST, 2012, MR. WALKER AND THE DISTRICT ATTORNEY -- I'M SORRY -- MR. ARCHER AND THE DISTRICT ATTORNEY ENTERED INTO A NEGOTIATED DISPOSITION IN THIS MATTER FOR A STATE PRISON TERM OF 27 YEARS AND FOUR MONTHS. THAT WAS TO A PLEA ON COUNTS ONE, TWO, THREE, FOUR, FIVE, SIX, AND SEVEN.

AFTER MR. ARCHER ENTERED HIS PLEA AT HIS REQUEST, THE MATTER WAS CONTINUED FOR SENTENCING SO THAT HE WOULD HAVE THE OPPORTUNITY TO COMPLETE VARIOUS LOCAL, SPECIAL CUSTODIAL PROGRAMS. SUBSEQUENTLY, MR. WALKER (SIC) HAS FILED THIS MOTION.

THE 01-DEFENDANT: ARCHER.

THE COURT: THE COURT HAS HAD THE OPPORTUNITY TO REVIEW AND CONSIDER THE COURT FILE, WHICH INCLUDES ALL OF THE TRANSCRIPTS. AND IN THE REPORTER'S TRANSCRIPT FOR THE NOVEMBER

1ST, 2012, PLEA, ON PAGES TWO AND THREE, THE COURT EXPLAINED THE OFFER IN THE CONTEXT OF INITIALLY A POTENTIAL OF 34 YEARS TO LIFE SENTENCE. THE COURT GAVE THE DEFENDANT AND COUNSEL MORE TIME TO CONSIDER THE DISPOSITION. ON PAGE EIGHT, AFTER COUNSEL AND MR. WALKER --

THE 01-DEFENDANT: ARCHER.

THE COURT: I'M SORRY. I APOLOGIZE, MR. ARCHER. I'VE BEEN DEALING WITH MR. WALKER IN A MATTER.

AFTER COUNSEL AND MR. WALKER -- ARCHER HAD THE OPPORTUNITY TO CONFER, WHEN THE MATTER RESUMED, THE COURT NOTED THAT THE STRIKE PRIOR WAS NO LONGER PART OF THE PROCEEDINGS. THIS WAS AT PAGE FIVE. THIS WAS IN MR. WALKER --

THE 01-DEFENDANT: ARCHER.

THE COURT: -- MR. ARCHER'S PRESENCE.

PAGES 11 THROUGH 13 SETS OUT THE REQUEST TO CONTINUE THE MATTER FOR SENTENCING, AND THE COURT INFORMED MR. ARCHER THAT HE WOULD BE GIVEN A REASONABLE AMOUNT OF TIME BASED UPON HIS PROGRESS IN THE LOCAL PROGRAMS.

PAGES 4 THROUGH 11, THE COURT AND COUNSEL IN MR. ARCHER'S PRESENCE DISCUSSED THE AMENDED INFORMATION THAT DELETED ALLEGATIONS OF PRIOR THREE CONVICTIONS, WHICH CANNOT BE ESTABLISHED, AND DISCUSSED THE SENTENCE STRUCTURE OF THE PROPOSED DISPOSITION.

ON PAGE 14, THERE WAS COLLOQUY BETWEEN THE DEFENDANT AND THE DISTRICT ATTORNEY. THE DEFENDANT STATED THAT HE WISHED TO ACCEPT THE AGREED-UPON DISPOSITION; THAT HE HAD SUFFICIENT TIME TO DISCUSS IT WITH HIS ATTORNEY; AND THAT HE HAD TOLD HIM ATTORNEY EVERYTHING HE WAS GOING TO TELL HIS

ATTORNEY ABOUT THIS CASE.

PAGES 14 THROUGH 19, THE DEFENDANT'S CONSTITUTIONAL RIGHTS AND CONSEQUENCES OF HIS PLEA WERE EXPLAINED. THE DEFENDANT SAID THAT HE UNDERSTOOD THAT.

PAGE 17, THE DEFENDANT STATED, QUOTE, I JUST DON'T FEEL RIGHT ABOUT THIS SHIT, UNQUOTE. HE ALSO STATED THAT HE WAS, QUOTE, IN THE DARK, UNQUOTE, AND THAT HE FELT HE HAD NO CHOICE BUT TO TAKE THE DEAL OR QUOTE, GET LIFE, UNQUOTE.

SO CLEARLY AT THAT POINT, MR. ARCHER WAS AWARE THAT THERE WAS THE POTENTIAL OF LIFE IMPRISONMENT IN THIS MATTER.

PAGES 18 THROUGH 19, THE COURT EXPLAINED THAT THE DEFENDANT DID NOT HAVE TO TAKE THE DISPOSITION AND HE HAD THE OPTION TO PROCEED TO TRIAL. THE COURT TOOK A RECESS FOR THE DEFENDANT TO AGAIN CONSIDER HIS CHOICES.

ON PAGE 20, THE TRANSCRIPT SETS OUT THAT DEFENSE COUNSEL INFORMED THE COURT THAT THE DEFENDANT, WHO WAS IN HIS PRESENCE, WISHED TO PROCEED WITH THE PROPOSED PLEA.

PAGES, ESSENTIALLY, 20 THROUGH 27, THE DEFENDANT ENTERED HIS PLEA AND THE COURT FOUND THAT THE DEFENDANT'S PLEA WAS KNOWINGLY, EXPRESSLY, INTELLIGENTLY, AND VOLUNTARILY MADE WITH AN UNDERSTANDING OF ITS NATURE AND CONSEQUENCES.

AT THE CONCLUSION OF THAT COLLOQUY, THE DEFENDANT APOLOGIZED FOR HIS EARLIER ATTITUDE IN COURT.

NOTHING ON THIS RECORD DEMONSTRATES HOW, MR. ARCHER, YOU WOULD HAVE PREVAILED HAD YOU GONE TO TRIAL OR WHAT EVIDENCE EXISTED THAT MIGHT EXONERATE YOU. NOTHING ON THIS RECORD DEMONSTRATES THAT THE PEOPLE THAT OFFERED YOU A

BETTER DISPOSITION OR THAT THEY WOULD HAVE MADE SUCH AN OFFER. NOTHING ON THIS RECORD DEMONSTRATES THAT YOU WERE ENTERING YOUR PLEA UNDER DURESS OR TRICKERY OR FRAUD. EVERYTHING WAS EXPLAINED TO YOU. YOU KNEW THE MAXIMUM POTENTIAL YOU FACED IF YOU WENT TO TRIAL. YOU SAID YOU UNDERSTOOD EVERYTHING AND THIS WAS THE DISPOSITION THAT YOU WANTED.

THERE'S NOTHING ON THIS RECORD THAT INDICATES ANYTHING YOUR ATTORNEY DID PREJUDICED YOU. NOTHING DEMONSTRATES THAT YOUR ATTORNEY'S CONDUCT IN THIS MATTER FELL BELOW THE PREVAILING STANDARD FOR THE DEFENSE. AND ERRONEOUS ADVICE OF COUNSEL DOES NOT REQUIRE A GRANT OF A MOTION TO WITHDRAW. THE COURT OF APPEAL FOUND THAT IN *PEOPLE VS. NOCELOTL*, N-O-C-E-L-O-T-L, 211 CAL.APP.4TH 206 AT 211.

SO THE BOTTOM LINE HERE, MR. ARCHER, IS THAT YOU'VE DEMONSTRATED AN INSUFFICIENT BASIS TO GRANT YOUR MOTION, AND YOUR MOTION IS DENIED.

THE 01-DEFENDANT: I HAVE A CERTIFICATE OF PROBABLE CAUSE.

THE COURT: THE COURT WOULD CONSIDER THAT.

THE 01-DEFENDANT: I HAVE THE MOTION. MOTION FOR THE CERTIFICATE OF PROBABLE CAUSE.

THE COURT: YOU ANTICIPATED MY NEXT REQUEST. WHY DON'T YOU SUBMIT IT.

THE 01-DEFENDANT: YES.

THE COURT: UNFORTUNATELY, WE CANNOT DO SENTENCING TODAY BECAUSE WE HAVE OUR JURORS WAITING OUT THERE.

WOULD YOU BE PREPARED TO DO SENTENCING TOMORROW?

MR. DENTON: I HAVE A -- WHAT I THINK IS GOING TO BE AN

ALL-DAY COURT TRIAL IN 113 TOMORROW.

THE COURT: MR. ARCHER PROVIDED AN OPEN TIME WAIVER, BUT I WANT TO TAKE CARE OF THIS AS SOON AS POSSIBLE.

MR. DENTON: I COULD DO IT FRIDAY.

THE COURT: OKAY. FRIDAY.

ALL RIGHT. THE MATTER IS CONTINUED UNTIL AUGUST 2ND, 2013, AT 8:30 A.M. HERE IN DEPARTMENT 130. THAT WILL BE FOR PROBATION AND SENTENCING AND ALSO CONSIDER MR. ARCHER'S MOTION FOR CERTIFICATE OF PROBABLE CAUSE.

THANK YOU.

MR. DENTON: THANK YOU, YOUR HONOR.

(WHEREUPON THE PROCEEDINGS WERE CONCLUDED.)

APPENDIX K

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

164

PEOPLE OF THE STATE OF CALIFORNIA
PLAINTIFF
Vs.
VAUGHN S ARCHER
DEFENDANT

NO. BA 390400
NOTICE OF MOTION AND APPLICATION TO WITHDRAW AND CHANGE PLEA.

TO: THE DISTRICT ATTORNEY COUNTY OF LOS ANGELES

DEPUTY DISTRICT ATTORNEY

NOTICE IS HEREBY GIVEN ON 7-9-13 OR SOON THERE AFTER AS THE ORDER MAY BE HEARD IN DEPT 130 OF THE ABOVE ENTITLED COURT THE DEFENDANT VAUGHN S. ARCHER WILL MOVE TO WITHDRAW HIS PLEA OF GUILTY TO ALL COUNTS CHARGED AND ENTER A PLEA OF NOT GUILTY ON THE FOLLOWING GROUNDS: FRAUD, DURESS, DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL, AND MISTAKE IGNORANCE OR INADVERTANCE OR ANYOTHER FACTOR OVERREACHING THE EXERCISE OF CLEAR AND FREE JUDGEMENT. SUPPORTED BY THE ATTACHMENT OF MEMORANDOMS OF POINTS AND ATHORITIES AND UPON THEREFORE DECLARATION AND ARGUMENT FOR THE RECORD.

Vaughn S Archer
IN PRO-PER

7-9-13

DECLARATION

165

ON 10-3-12 IN DIV. 112 I HAD MARSDEN HEARING ON MARCUS HUNTLEY. FOR WITH HOLDING INFORMATION AND FAILING TO INVESTIGATE. MOTION WAS DENIED. (ARGUMENT SUPPORTED BY) EXIBIT (1) (TRANSCRIPTS) 10-3-12

ATTORNEY ARGUED MOTION WRITTEN BY PREVIOUS ATTORNEY, STATED NO CASE LAW ONLY ASSUMPTIONS. DID NOT ARGUE LAWFUL DEFENCE. (SUPPORTED BY TRANSCRIPTS) 10-3-12 EXIBIT (2)

COURT, DISTRICT ATTORNEY, PUBLIC DEFENDER USED FRAUD, DURESS TO ILLEGALLY INDUCE A INVOLUNTARY PLEA OF TRICKERY AND DECEPTION AND ILLEGAL THREATS OF 34 YEARS TO LIFE. (SUPPORTED BY PLEA TRANSCRIPTS) EXIBIT (3) 11-1-12

ATTORNEY WAIVED FURTHER ARRAIGNMENT ON SECOND AMENDED COMPLAINT WITHOUT ADVISING CLIENT OF HIS RIGHTS OR ADVISING CLIENT OF CONSEQUENCES OF WAIVER WHICH ADDED MORE TIME, WHICH WAS NO ADVANTAGE TO DEFENDANT. (SUPPORTED BY TRANSCRIPTS). EXIBIT (4) 11-1-12

: ALSO POINTS AND AUTHORITIES IN SUPPORT.

ATTORNEY FAILED TO ADVISE CLIENT OF FACTS

245 ASSULT IS NECESSARLY INCLUDED IN RABBERY AND CANNOT BE PUNISHED OR CONVICTED FOR BOTH WHEN PROSECUTION AVAILS DEFENDANT LISED THE FORCE TO CONSTITUTE THE CRIME OF RUBBERY. ATTORNEY SHOULD HAVE ADVISED CLIENT OF FACTS BEFORE MAKING CLIENT PLEA GUILTY

DIRILICTION OF DUTY.

ATTORNEY FAILED TO ADVISE CLIENT OF FACTS.

THE RULE REGUARDING PENAL CODE 654 THAT I CAN BE CHARGED FOR BOTH BUT NOT PUNISHED FOR BOTH BASED ON THE SAME ACT WHICH CONSTITUTES A VIOLATION OF 215 AND 211. ATTORNEY FAILED TO ADVISE PRIOR TO PLEA OF GUILTY.

DIRILICTION OF DUTY

ATTORNEY FAILED TO ADVISE CLIENT OF FACTS;

THE RULE OF PENAL CODE 654 SINGLE ACT OR COURSE OF CONDUCT, NO PERSON SHALL BE PUNISHED FOR MORE THAN ONE OFFENSE ARISING OUT OF A SINGLE COURSE OF CONDUCT.

DIRILICTION OF DUTY

DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FEDERAL AND CALIFORNIA CONSTITUTION UNDER THE 6TH AND 14TH AMENDMENTS.

DEFENDANTS 14TH AND 5TH AMENDMENT DUE PROCESS RIGHTS WHERE VIOLATED.

ATTORNEY FAILED TO PERFORM BASIC DUTIES UNDER 6TH AND 14TH AMENDMENT TO RENDER REASONABLE ASSISTANCE.

INCOMPETENT ATTORNEY TOLD CLIENT TO PLEAD GUILTY TO EVADE HIS DUTY TO INVESTIGATE FACTS AND ALL LAW AND DEFENCES AVAILABLE TO HIS CLIENT. ADVISE FROM COUNSEL EFFECTED OUTCOME OF THE PLEA PROCESS

DEFENDANT HAD TO RELY ON COUNSEL TO MAKE INFORMED DECISIONS OF FACT AND LAW AND TO PROTECT MY CONSTITUTIONAL RIGHTS.

ATTORNEY FAILED TO ADVISE CLIENT ABOUT PENAL CODE 1023 DOUBLE JEOPARDY AND ALLOWED DEFENDANT TO PLEAD THERETO DOUBLE JEOPARDY VIOLATING DEFENDANTS DUE PROCESS RIGHTS

ATTORNEY FAILED TO INVESTIGATE FACTS

DUE TO ATTORNEYS FAILURE TO INVESTIGATE FACT OF LAW AND NOT APPLING PENAL CODE 654. TO CLIENTS CASE. CLIENTS MAXIMUM POTIENTIAL TIME WAS MISCALCULATED WHICH WAS SAID TO BE 33 YEARS TO LIFE. IN WHICH I PLEADED GUILTY UNDER DURESS AND INGNORANCE, AGAINST MY FREE JUDGE-MENT TO 27 YEARS 4 MONTHS AT 85% ON THREAT FROM COUNSEL THAT I WOULD NEVER GET OUT UNLESS I TOOK THIS TIME. I WAS NOT AWARE OF THE RELEVENT CERCUMSTANCES OF MY PLEA OR THE LIKLEY CONSEQUENCES OF MY ACTIONS THEREFORE UNDER THE INFLUIENCE OF MISTAKE, INGNORANCE, INADVERTANCE OR ANY OTHER FACTOR OVERREACHING THE EXERCISE OF CLEAR AND FREE JUDGEMENT.

I VAUGHN S. ARCHER DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE TO THE BEST OF MY BELIEF.

DATE 6-13-13

Vaugh S. Archer
IN PRO-PER

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO WITHDRAW AND CHANGE PLEA

I

MISTAKE, IGNORANCE, INADVERTANCE OR ANY OTHER FACTOR OVERREACHING THE EXERCISE OF FREE JUDGEMENT IS GOOD CAUSE TO WITHDRAW A PLEA.

II

WITHDRAWAL OF PLEA OF GUILTY SHOULD NOT BE DENIED IN ANY CASE WHERE IT IS IN THE LEAST EVIDENT THAT THE ENDS OF JUSTICE WOULD BE SUBSERVED BY PERMITTING THE DEFENDANT TO PLEAD NOT GUILTY.

"IT HAS BEEN HELD THAT THE LEAST INFLUENCE OR SUPRISE...ECT..ECT. (1972) PEOPLE V. DENA 25. CAL. APP. 3d AT PP. 1012

III

AS A GROUND FOR WITHDRAWING A PLEA OF GUILTY SOME MORE THAN EXPECTATION OF A SENTENCE LESS SEVERE THAN ACTULLY IMPOSED. INJUSTICE FROM CONDUCT IMPROPERLY INDUCING ACCUSED TO EXPECT LENIENT PUNISHMENT.

PEOPLE V. LEDSMA (1987) CAL. 3d 176.

THE UNITED STATES SUPREME COURT HELD THAT DISPOSITIONS BY GUILTY PLEAS ARE ENTITLED TO FINALTY UNLESS THEY ARE THE PRODUCT OF FACTORS, SUCH AS MISUNDERSTANDING, DURESS, OR MISREPRESENTATION WHICH RENDERS A PLEA CONSTITUTIONALLY INADIQUATE AS A BASIS FOR IMPRISONMENT IMPLICT IN THESE HOLDINGS IN THE INFERENCE THAT STATUES WHICH AKNOWLEDGED SUCH FACTORS A GOOD CAUSE FOR WITHDRAWL OF A PLEA ARE CONSTITUTIONALLY SOUND. (1977) BLACKLEDGE V. SUPRA 431 U.S. 63

A DEFENDANT MUST UNDERSTAND THE NATURE OF THE CHARGES, ELEMENTS OF DEFENSE. PLEAS AND DEFENSES WHICH MAY BE AVAILABLE AND PUNISHMENT WHICH MAY BE EXPECTED BEFORE A TRIAL JUDGE ACCEPTS HIS WAIVER AND PLEA. PEOPLE V. HUNT (1985) 174 CAL APP 3d 95. 103-107

THE RULE HAS DEVELOPED THAT AN INFORMATION CHARGING AN OFFENSE NOT NAMED IN THE COMMITMENT ORDER WILL NOT BE UPHELD UNLESS THE EVIDENCE TAKEN BY THE MAGISTRATE SHOWS THAT THE OFFENSE WAS COMMITTED, AND THAT IT AROSE OUT OF THE TRANSACTION WHICH WAS THE BASIS FOR COMMITMENT ON A RELATED OFFENSE. THE FOREGOING RULE IS SUBJECT TO THE QUALIFICATION THAT AN OFFENSE NOT NAMED IN THE COMMITMENT ORDER MAY NOT BE ADDED TO THE INFORMATION IF THE MAGISTRATE MADE FACTUAL FINDINGS WHICH ARE FATAL TO THE ASSERTED CONCLUSION THAT THE OFFENSE WAS COMMITTED.

PEOPLE V. SUPERIOR COURT. 84 CAL. APP. 3d 506, 510

THE FILING OF AN INFORMATION IN SUPERIOR COURT CHARGING A PERSON WITH THE SAME FELONIES ALLEGED IN THE COMPLAINT BEFORE THE MAGISTRATE AND BASED ON EVIDENCE ADDUCED AT THE PRELIMINARY HEARING CANNOT BE DEEMED TO BE A NEW CRIMINAL ACTION, DEFENDANT WILL NOT BE UNLAWFULLY SUBJECT TO DOUBLE PROSECUTION OR DOUBLE JEOPARDY.

BUERIS V. SUPERIOR COURT 43 CAL. APP. 3d. 540

THE LEGISLATUER HAS MANIFESTED ITS CLEAR INTENT, THAT THE REMEDY OF AMENDMENT BE AVAILABLE TO SAVE AN INDICTMENT FROM "ANY DEFECT OR INSUFFICIENCY" ONLY IN THE SENCE THAT IF NOT AMENDED, IT WOULD BE SUBJECT TO BEING SET ASIDE PERSUANT TO MOTION 995, AN A CONVICTION BASED THEREON WOULD BE SUBJECT TO ATTACK EITHER DIRECTLY OR COLLATERALLY. (1962) PEOPLE V. CROSBY 58. CAL. 3d. 713, 722

IT IS CLEAR THAT A SUBSTANTIAL RIGHT OF THE DEFENDANT, TO WIT, TO ELECT WHETHER TO HAVE A JURY TRIAL BEFORE BEING SUBJECT TO ADDITIONAL ENHANCEMENTS WAS PREJUDICE BY THE COURTS FAILURE TO PROPERLY ARRAIGN HIM AND SECURE A PERSONAL JURY WAIVER ON THE INFORMATION AS AMENDED. IT IS IMMATERIAL WHAT WAS ALLEGED. HE WAS ENTITLED TO KNOW THE LAW [illegible] OF AN ADVERSE FINDING OF THE FACTS BEFORE HE ELECTED TO WAIVE JURY TRIAL PEOPLE V. HOPKINS 39 CAL. APP 3d 107 (1974)

PENAL CODE §969
A DEFENDANT SHALL BE REARRAIGNED ON SUCH INFORMATION AND REQUIRED TO PLEA THERETO.

TO ALLOW THE PROSECUTION TO INDISCRIMINATLY CHARGE ENHANCEMENTS WITHOUT SUBJECTING SUCH ALLEGATIONS TO JUDICIAL SCRUTNEY UNDER 995 MOTION WOULD BE TO UNDERMINE THE PROCEDURAL RIGHTS GARANTEED TO THE DEFENDANT BY THE PRELIMINARY HEARING PROCESS. THE NEGITIVE EFFECTS OF POTENTIAL OVERCHARGED ENHANCEMENTS ALSO EXTEND TO THE PLEA BARGAIN AND TO THE TRIAL ITSELF AT WHICH EVIDENCE IRRELEVANT TO THE SUBSTANTIVE OFFENSE MAY BE INTRODUCED OF AN ENHANCEMENT ISSUE.
PEOPLE V. SUPERIOR COURT (MENDELLA)(1983)
33. CAL 3d. 754.

PENAL CODE § 1008
WHICH PERMITS AN AMENDMENT TO BE
MADE TO AN INFORMATION AFTER THE
DEFENDANT HAS PLEAD, IN THE DISCRETION
OF THE COURT, WHERE IT CAN BE DONE
WITHOUT PREJUDICE TO THE SUBSTANTIAL
RIGHTS OF THE DEFENDANT AND SAID
CODE SECTION IS IN ACCORD WITH SECTION
4½ OF ARTICLE VI OF THE CONSTITUTION
AND WITH THE RULE OF CATER DECISIONS
THAT MERE TECHNICAL ERROR IN EITHER
PLEADING OR PROCEDURE WHICH DO NOT
IN ANY WAY EFFECT THE SUBSTANTIAL
RIGHTS OF THE PARTIES AND ARE NOT TO
BE EMPLOYED TO DEFEAT JUSTICE.

PENAL CODE 1009
A DEFENDANT SHALL BE ARRAIGNED
FORTHWITH, WHEN FAILURE TO REARRAIGN
WOULD RESULT IN SUBSTANTIAL PREJUDICE.
IT MAY SUBSTANTIALLY AGGRAVATE THE
POTIENTIAL PUNISHMENT.

PENAL CODE 245 ASSULT AND 211 ROBBERY THE ACT OF INFLICTING FORCE WITH A WEAPON CANNOT BOTH BE PUNISHED AS ASSULT WITH A DEADLY WEAPON AND AVAILED BY THE PROSECUTION AS TO FORCE NECESSARY TO CONSTITUTE THE CRIME OF ROBBERY. FOR CO-OPERATIVE ACTS CONSTITUTING BUT ONE OFFENSE WHEN COMITTED BY THE SAME PERSON AT THE SAME TIME WHEN COMBINED CHARGE BUT ONE CRIME AND ONE PUNISHMENT CAN BE INFLICTED.

1953) PEOPLE V. LOGAN 41 CAL 2d 279, 290

PENAL CODE 215 CARJACKING

THIS SECTION SHALL NOT SUPERSEDE OR EFFECT SECTION 211. A PERSON MAY BE CHARGED WITH A VIOLATION OF THIS SECTION AND SECTION 211. HOWEVER NO DEFENDANT MAY BE PUNISHED UNDER SECTION 215 AND 211 FOR THE SAME ACT WHICH CONSTITUTES A VIOLATION OF BOTH SECTION 215 AND 211.

PENAL CODE SECTION § 654.

HAS BEEN APPLIED NOT ONLY WHEN THERE IS ONE "ACT" IN THE ORDINARY SENSE BUT WHERE A COURSE OF CONDUCT INVOLVING SEVERAL ACTS VIOLATION MORE THAN ONE STATUE. THE INQUIRY IS WEATHER THE ACT WHICH COMPRISE THE COURSE OF CONDUCT ARE DIVISIBLE. SO THAT THE DEFENDANT CAN BE PUNISHED MORE THAN ONCE. WEATHER THE ACTS ARE DIVISIBLE DEPENDS ON THE INTENT AND OBJECTIVE OF THE DEFENDANT IF ALL ACTS WHERE INCEDENT TO ONE OBJECTIVE. HE MAY BE PUNISHED FOR ANY ONE OF SUCH ACTS BUT NOT MORE THAN ONE.

BURRIS V. SUPERIOR COURT
43 CAL.APP. 3d. 530, 540

THE PLEA AND PLEA BARGAINING STAGE OF A CRIMINAL PROCEEDING AS A CRITICAL STAGE IN THE CRIMINAL PROCESS AT WHICH THE DEFENDANT IS ENTITLED TO EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FEDERAL AND CALIFORNIA CONSTITUTION. IT IS HELD WHERE DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL RESULTS IN THE DEFENDANT PLEADING GUILTY, THE DEFENDANT HAS SUFFERED A CONSTITUTIONAL VIOLATION GIVING RISE TO A CLAIM OF RELIEF FROM A GUILTY PLEA.

IN RE: ALVERNEZ (1992) 2 CAL 4TH 924, 933, 93

THE DUE PROCESS CLAUSE IN THE 14TH AMENDMENT WOULD PRESUMABLY PROHIBIT STATE COURTS FROM DEPRAVING PERSON OF LIBERTY OR PROPERTY AS PUNISHMENT FOR CRIMINAL CONDUCT EXCEPT TO THE EXTENT AUTHORIZED BY STATE LAW.

5TH AMENDMENT DUE PROCESS CLAUSE IN LIMITING A COURT RIGHT TO METE OUT CUMULCITIVE OR CONSECUTIVE SENTENCES FOR DIFFRENT STATUTORY OFFENSES ARISING OUT OF ONE COURSE OF CRIMINAL CONDUCT

THE BASIC OBLIGATION OF COUNSEL TO A CRIMINAL DEFENDANTS IS TO RENDER REASONABLY COMPETENT ASSISTANCE. A ATTORNEY IN A CRIMINAL CASE MUST PERFORM BASIC DUTIES. THE SIXTH AMENDMENT AND ARTICLE (1) SECTION (15) OF THE CALIFORNIA CONSTITUTION. REQUIRE COUNSELS DILIGENCES AND ACTIVE PARTISIPATION OF HIS CLIENTS CASE. CRIMINAL DEFENSE ATTORNEYS HAVE A DUTY TO INVESTIGATE FACTS OF LAW THAT MAY BE AVAILABLE TO THE DEFENDANT. THIS OBLIGATION INCLUDES. CONFERING WITH CLIENT WITHOUT UNDUE DELAY AND AS OFTEN AS NECESSARY TO ELECT MATTERS OF DEFENSE COUNSEL SHOULD PROMPTLY ADVISE HIS CLIENT OF HIS RIGHTS AND TAKE ALL NECESSARY ACTIONS TO PRESERVE THEM THESE OBLIGATIONS ARE AS IMPORTANT AT THE TIME THE DECISION IS MADE TO ENTER A PLEA AS THEY ARE DURING THE COURSE OF TRIAL. PEOPLE V. BROWN (1986) 177 CAL. APP. 3d 357, 544-545.

BY COUNSEL ADVISING HIS CLIENT TO PLEAD GUILTY CANNOT BE PERMITTED TO EVADE HIS RESPONSIBILITY TO ADAQUILITY REASEARCH FACTS OF LAW

IN RE: HAWLEY 67 CAL. 2d 824, 828

A PLEA ENTERED ON ADVISE OF COUNSEL HAS TO BE IN THE RANGE OF COMPETENCE BECAUSE OF HIS INEFFECTIVE PERFORMANCE EFFECTED THE PLEA PROCESS.

PEOPLE V. LEDSMA (1987) 43 CAL 3d 171. P. 2d 893; 233 CAL RPTR 404.

BEFORE ENTERING A PLEA DEFENDANT WAS ENTITCED TO RELY ON HIS COUNSEL TO MAKE A INDEPENDANT EXAMINATION OF THE FACTS

IN RE WILLIAMS (1969) 1. CAL 3d 588 168, 175

PENAL CODE SECTION § 1023

NO PERSON SHALL BE CONVICTED OF BOTH AN INCLUDED OF A GREATER OFFENSE. NO PERSON SHALL BE TWICE PUT IN JEOPARDY FOR THE SAME OFFENSE.

THE SUPREME COURT OF THIS STATE IN ITS MORE RECENT DECISION, THE RULE IS THAT A DEFENDANT MAY BE CONVICTED OF TWO OFFENSES WHEN THEY DIFFER IN THEIR NECESSARY ELEMENT AND ONE IS NOT NECESSARILY INCLUDED WITHIN THE OTHER. IF ONE IS NECESSARILY INCLUDED IN THE OTHER THE GUARANTY AGAINST DOUBLE JEOPARDY APPLIES UNDER ALL TEST THE DOCTRIN OF INCLUDED OFFENSES IS RECOGNIZED.

PEOPLE V. KURPA 64 CAL APP 2d. 592

COUNSEL HAS A DUTY TO CONFER WITH HIS CLIENT ABOUT ALL AVAILABLE DEFENCES OF FACT AND OF LAW BEFORE PERMITTING HIM TO PLEAD GUILTY. TO BE VALID A GUILTY PLEA MUST BE BASED UPON A DEFENDANTS FULL AWARENESS OF THE RELEVENT CERCUMSTANCES AND THE LIKELY CONSEQUENCES OF HIS ACTIONS. THE NEED FOR FULL UNDERSTANDING IN ENTERING A GUILTY PLEA IS UNDERSCORED WITH RESPECT TO WITHDRAWING A PLEA, WHICH ALLOWS A DEFENDANT TO WITHDRAW HIS PLEA FOR MISTAKE, IGNORANCE OR INADVERTANCE OR ANY OTHER FACTOR OVERREACHING DEFENDANTS FREE AND CLEAR JUDGEMENT. A PLEA CANNOT STAND ON A SERIOUS MISAPPREHENSION OF THE PENAL CONSEQUENCES OF A PLEA BARGAIN. FAILURE TO CORRECTLY CALCULATE HIS MAXIMUM POTIENTIAL SENTENCE BEFORE PERMITTING HIM TO ENTER A PLEA THAT RESULTED IN YEARS DIFFERENCES OF IMPRISIONMENT CONSTITUTES A DERICTION OF HIS DUTY TO ENSURE DEFENDANT ENTERED HIS PLEA WITH FULL AWARENESS OF THE RELEVENT CERCUMSTANCES AND THE LIKELY CONSEQUENCES OF HIS ACTIONS

COUNSEL WAS A SUBSTANTIAL INDUCEMENT CAUSING DEFENDANT TO PLEAD GUILTY. ATTORNEYS CALCULATION LED DEFENDANT TO BELIEVE HE WAS SHORTENING HIS POTIENTIAL SENTENCE. AS A RESULT OF COUNSELS ACTS OR OMISSIONS IT FAIRLY APPEARS DEFENDANT ENTERED HIS PLEA UNDER THE INFLUENCE OF MISTAKE, IGNORANCE OR INADVERTANCE OR ANY OTHER FACTOR OVERREACHING CLEAR AND FREE JUDGEMENT WHICH WOULD JUSTIFY THE WITHDRAWL OF DEFENDANTS GUILTY PLEA, DEFENDANT WAS INEFFECTIVLY REPRESENTED BY COUNSEL. PREJUDICE CAN BE MEASURED BY DETERMINING WEATHER COUNSELS ACTS OR OMISSIONS ADVERSLY EFFECTED DEFENDANTS ABILITY TO KNOWINGLY AND INTELLIGENTLY AND VOLUNTARILY DECIDED TO ENTER A PLEA OF GUILTY. WHERE A DEFENDANT HAS BEEN DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN ENTERING A PLEA OF GUILTY, HE IS ENTITLED TO REVERSAL AND A OPPORTUNITY TO WITHDRAW HIS PLEA IF HE SO DESIRES.

PEOPLE V. JOHNSON 36. CAL. APP. 1351-1357